



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings :

- against - : FINAL

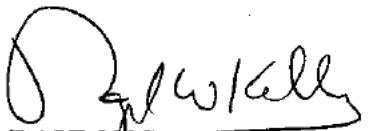
Detective David Velez : ORDER

Tax Registry No. 911577 : OF

: DISMISSAL
-----X

Detective David Velez, Tax Registry No. 911577, Shield No. 60, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 94, as set forth on form P.D. 468-121, dated; and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective David Velez from the Police Service of the City of New York.


RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: 0001 Hrs. April 16, 2008



POLICE DEPARTMENT

March 10, 2008

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In the Matter of the Charges and Specifications : Case No. 81747/06
- against - :
Detective David Velez :
Tax Registry No. 911577 :
:-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department: Krishna O'Neal, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Mitchell Garber, Esq.
Worth, Longworth & London, LLP
111 John Street - Suite 640
New York, NY 10038

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department appeared before me on October 1, 2007, October 2, 2007, and October 5, 2007, charged with the following:

1. Said Detective David Velez, assigned to the 67 Precinct Detective Squad, on or and between August 19, 2005 and November 17, 2005, knowing the character and content of the communication which, in whole or in part, depicted actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which was harmful to minors, intentionally used a computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, attempted to initiate or engage in such communications with a person who was a minor and by means of such communication he attempted to importune, invite, or induce a minor to engage in sexual intercourse, oral sexual conduct, anal sexual conduct, or sexual conduct with him or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit, to wit: said Detective did initiate and engage in sexually explicit communications with an individual known to the Department whom said Detective believed to be a fourteen year old girl. (as amended)

PG 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT- PROHIBITED CONDUCT
GENERAL REGULATIONS

NYS PENAL LAW SECTION 110/235.22 (1) (2) ATTEMPTED DISSEMINATION
INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE

2. Said Detective David Velez, assigned to the 67 Precinct Detective Squad, on or and between November 9, 2005 and February 23, 2006, knowing the character and content of the communication which, in whole or in part, depicted actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which was harmful to minors, intentionally used a computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, attempted to initiate or engage in such communications with a person who was a minor and by means of such communication he attempted to importune, invite, or induce a minor to engage in sexual intercourse, oral sexual conduct, anal sexual conduct, or sexual conduct with him or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit, to wit: said Detective did initiate and engage in sexually explicit electronic communications with an individual known to the Department whom said Detective believed to be a fourteen year old girl. (as amended)

PG 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

NYS PENAL LAW SECTION 110/235.22 (1) (2) ATTEMPTED DISSEMINATION
INDECENT MATERIAL TO MINORS IN THE FIRST DEGREE

3. Said Detective David Velez, assigned to the 67th Precinct Detective Squad, on or about and between August 19, 2005 and February 23, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department to wit: said Detective entered into an internet chat room and identified himself as a New York

City Police Department Detective in order to have contact of a sexual nature with a child less than seventeen (17) years old. (as amended)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT
GENERAL REGULATIONS

4. Said Detective David Velez, assigned to the 67th Precinct Detective Squad, on or about March 14, 2006, was wrongfully in possession of an unauthorized duplicate New York City Police Department shield # 60, without permission or authority to do so. (as amended)

P.G. 203-10, Page 2, Paragraph 18 – PUBLIC CONTACT- PROHIBITED CONDUCT
GENERAL REGULATIONS

5. Said Detective David Velez, while assigned to the Fleet Service Division, on or about April 25, 2007, during an official Department interview conducted by Lieutenant Mark DeFazio, IAB Group 31, pursuant to the provisions of Patrol Guide Section 206-13, did wrongfully make false and misleading statements, to wit: said Detective stated that he did not possess downloaded nude photographs of an individual known to the Department on a personal cellular phone used by said Detective, knowing that said statement was not, in fact, true. (as amended)

P.G. 203-08, Page 1, Paragraph 1- GENERAL REGULATIONS- MAKING FALSE
STATEMENTS

P.G. 203-10, Page 1, Paragraph 5- PUBLIC CONTACT- PROHIBITED CONDUCT
GENERAL REGULATIONS CONDUCT

6. Said Detective David Velez, assigned to the 67th Precinct Detective Squad, on or about March 14, 2006, at a location known to the Department, in Kings County, New York, did wrongfully possess an unregistered Bushmaster XM-15-E2s, Serial Number BFI440961 assault rifle containing a flash suppressor, collapsible stock, and a pistol grip. (as amended)

N.Y. ADMINISTRATIVE CODE § 10-303.1 (a), § 10-304 PROHIBITION OF THE
POSSESSION OR DISPOSITION OF ASSAULT WEAPONS

P.G. 203- 10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Krishna O'Neal, Esq., Department Advocate's Office, and the Respondent was represented by Mitchell Garber, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDDepartment's Case

The Department called Detective Thomas Janow, Sergeant Theodore Petrides, Vanessa Wein, Patricia Bartha, Jessica Bartha, and Lieutenant Mark DeFazio as witnesses.

Detective Thomas Janow

Janow has been a member of the Department for over ten years and has been assigned to Internal Affairs Bureau ("IAB") Group 7 for the past three years. He testified that his group handles all types of cases involving computers such as misuse of Department computers, computer forensics, criminal cases involving computers and online cases.

Janow testified that he is assigned to Group 7 as an investigator and he handles primarily online investigations. He said that there are two types of online investigations. Proactive investigations are based on past complaints where a complaint was made that misconduct was taking place in certain chat rooms or dating sites online. Janow said he would monitor the site and make contact with individuals to see if there were any problems with the site. An example would be past complaints that Police Department merchandise was being sold on the eBay website. Reactive investigations involve actual complaints against a subject officer who is accused of doing something improperly online. Janow explained that he would create fictitious identities that he could use to

communicate with the subject in a chat room online.¹ The fictitious identities would be based on the type of complaint, and could be based on gender or sexual preferences, for example. Janow said that the chat rooms were either public, where up to 30 people could be in a room discussing a certain topic and where everyone could see each other's text messages back and forth. There are also side rooms where people can have private conversations apart from the main chat room online.

Janow stated that he would set up a profile of the fictitious identity and use information so that the person could describe himself or herself. He would set up the profile with a name, location, age, sex, and sexual preference. He explained that he would get photographs to exchange online from stock photo houses or send a photo of an undercover detective to the National Center for Missing and Exploited Children and they could age regress the photo to look like a younger person. For his undercover investigations, Janow said that he had access to cell phones with numbers that he could give out to make contact with people. Janow stated that his goal is to either substantiate a case or exonerate a case. To substantiate a case, he was looking to have conversation. He explained that he cannot escalate the conversation, but if he can schedule a meeting so that the subject comes to the location, he can establish the person as the actual user of the online account.

Janow said that his office works with various law enforcement agencies to do its work, such as the New York State Police, the New Jersey State Police, police departments in Nassau, Suffolk, and Westchester counties, and various District Attorney offices. Janow stated that he has worked on approximately 35 computer cases and approximately ten of them involved members of the service chatting with underage

¹ Janow defined a chat room as a place on the internet where people go to exchange ideas and information. He explained that chat rooms are also used to meet people for dating as well as sexual contact.

children. He stated that cases can run from one week to several months before resolution. He explained that of the ten cases he mentioned involving members of the service, five of them resulted in arrests.

In order to capture the online sessions where the subject was communicating through America Online ("AOL") instant messaging chat sessions, Janow said that a program called DeadAIM, was utilized. DeadAIM logs the sign on and sign off time of the user, logs the conversation that takes place online and stores the information to a specific location under that user's name. To store images or photographs, Janow said he would print the screen containing the image, or if the image was an email attachment, he would store the images using software such as SnagIt.

On August 19, 2005 at approximately 1:30 p.m., Janow testified that he was working and conducting a few online investigations. He said that he had investigations involving members of the service as well as people impersonating police officers who were making contact with people in the "I Love New York City Cops" chat room on AOL. He received a communication from an individual who identified himself as KingsCpl4U.² Janow said he was using the identity with the screen name, "LisaDowntownGal" when he received a message from KingsCpl4U [later identified as the Respondent]. He responded by sending KingsCpl4U a message which stated, "Hi, you sent me a message." (Department's Exhibit (DX) 1A.) Janow explained that when he sent his message to KingsCpl4U, he had already signed off.

Janow testified that he created an AOL profile for LisaDownTownGal (DX 1B). He described her as a female who lives in the downtown area of Manhattan, Soho, and Tribeca. Her marital status is described as "I'm 14 and havin too much fun..." and her

² The word, "couple" was abbreviated "Cpl" in the screen name.

hobbies and interest include hanging with Alexa, watching the "Boyz in Blue (NYPD)" and the "Rubbermen (FDNY)." Janow gave her occupation as a student and her favorite gadgets listed were her shoes and her iPod. Janow explained that KingsCpl4U also had a profile (DX 1C). Janow testified that the profile listed [REDACTED] and David from [REDACTED] New York. Their marital status was having fun together or solo, friends forever." Their hobbies and interests included AOL, shopping and having lots of fun. Janow said that their favorite gadgets were "Nextel Phones, Dell Computer and ?????". Occupations listed were that he was one of the "World's Greatest Detectives" and she was a paralegal. Their personal quote was "Don't Knock it until you try it, Live Life to the Fullest!!!!!!!"

Janow explained that from reading the KingsCpl4U profile of [REDACTED] and David who were located in [REDACTED] and seeing the term, "world's greatest detective" as well as the reference to Nextel phones and Dell computers, he thought this profile needed further investigation. Janow further explained that the KingsCpl4U profile also contained a series of photographs (DX 1D-1I). He described the photographs as vacation photos with a man and a woman on a boat, the man holding a sting ray, and the same couple at dinner. He described another picture of the man and woman appearing to be at a street fair. Janow then described a picture of the male bare-chested displaying tattoos, one of the tattoos looking like a memorial to the World Trade Center. Janow said there was a photograph of the couple holding a sea shell, and the final picture was of the couple, and the male was wearing a necklace with a police officer's shield on it. Janow testified that once he obtained the photographs, he enlarged them and was able to obtain a partial shield number identifying the last digit as a "3" from a four-digit shield number (DX 2A-2B).

Janow testified that from the information he gathered at this point, he continued his investigation into determining the identity of the male in the profile. He also worked with the Manhattan District Attorney's Sex Crime Center. Janow said there were four, subsequent internet communications between KingsCpl4U and LisaDowntownGal (DX 3A-3D).³ He summarized portions of the internet chats that were sexual in nature. With respect to the September 1, 2005 conversation, Janow stated that KingsCpl4U asked LisaDowntownGal to describe herself. Janow, responding as LisaDowntownGal typed, "5'5", 110 pounds with reddish-blond hair." KingsCpl4U responded, "mmmm very edible." LisaDowntownGal responded, "You really think so," and KingsCpl4U responded, "Mmmmmmmmm yea." They continued the conversation and KingsCpl4U stated that he would be working a big parade in Brooklyn. Janow said the internet conversation continued as follows:

KingsCpl4U: how old r you?

LisaDowntownGal: 14 well alomst [almost] 15 is that ok

KingsCpl4U: well no you young too young

With respect to the September 29, 2005 chat, Janow testified that the following exchange took place between KingsCpl4U and LisaDowntownGal:

LisaDowntownGal: I saw your photos are you two like swappers

KingsCpl4U: YES

LisaDowntownGal: what's that like

KingsCpl4U: IT'S KOOL BUT I LIKE TP [TO] PLAY MYSELF
HOW OLD R YOU/

³ DX 3A-3D are the DeadAIM chat session logs between KingsCpl4U and LisaDowntownGal. There are four, separate chat dates which are September 1, 2005, September 29, 2005, November 2, 2005 and November 19, 2005.

LisaDowntownGal: how come no body reads profiles anymore?
next month 15
and you?

KingsCpl4U: IM 34

LisaDowntownGal: that's not old old is like 50

KingsCpl4U: YOUR SEXUALLY ACTIVE?

LisaDowntownGal: yes a little
i like boys and stuff

KingsCpl4U: WHAT HAVE YOU DONE?

LisaDowntownGal: stuff kissin
and...im embaresst (embarrassed)...

KingsCpl4U: WHAT STUFF?

LisaDowntownGal: well not all the way

Janow continued the conversation as LisaDowntownGal and asked KingsCpl4U what he liked to do best. KingsCpl4U responded, "What though?" and the conversation continued:

LisaDowntownGal: touching it
See boyz are like losers that's why older guys are so cool

KingsCpl4U: IM VERY VERY ORAL

LisaDowntownGal: boyz want to like do it at the movies

KingsCpl4U: WHAT HAVE YOU DONE THOUGH?

LisaDowntownGal: like kissing it,
i like oral
but that's not really sex
when i do it i want it to be someplace nice
and not in public or a car

KingsCpl4U: LOL [laughing out loud] I LOVE EATING PUSSY
YOU HAVE PICS [pictures]?

LisaDowntownGal: i do but on my computer
im brat sittin
i can sent [send]

KingsCpl4U: I WANNA SEEE IT NOW
EVER HAD YOUR PUSSY EATEN?

LisaDowntownGal: no
the boy was a loser and did not want to

Janow testified that KingsCpl4U continued to ask her who was the oldest person that she had been with and her response was a girlfriend's brother who was 25 years old. The conversation continued:

KingsCpl4U: WHAT YOU DO WITH HIM?

LisaDowntownGal: he was nice we went to lunch and stuff
but he only had a car so we kissed
what's your name for real
im LISA

KingsCpl4U: GOTTA RUN HERE
DAVE
BYE

LisaDowntownGal: ill send it later
bye Dave

Janow said that the chat session ended at 5 p.m. He explained that the chat session between the two of them continued on November 2, 2005.

Janow testified that the conversation continued between himself as

LisaDowntownGal and KingsCpl4U. KingsCpl4U asked if there were any pictures and LisaDowntownGal responded that she had pictures of her on the beach. KingsCpl4U asked if she had any "naughty ones" and she responded, "Yes does topless count." KingsCpl4U responded, "Yes," and what else and LisaDowntownGal responded that it was on a cam phone [camera phone]. KingsCpl4U responded that it was cool and for her to send them to him and he also responded that he had "lots also," referring to pictures.

The conversation continued:

LisaDowntownGal: of what?

KingsCpl4U: my cock

LisaDowntownGal: really?????

KingsCpl4U: yup

LisaDowntownGal: naked? Or in shorts

KingsCpl4U: yup my cock shots

LisaDowntownGal: what like a banana hammock? Speedos

KingsCpl4U: nope naked cock

According to Janow, LisaDowntownGal asked KingsCpl4U if he was going to show the pictures to his wife and he responded by asking her what is the oldest guy she has been with. Janow stated that he took this comment to mean "sexually." Later in the conversation Janow said that LisaDowntownGal said that she "kissed" and KingsCpl4U responded, "Do tell. Oral sex?" and LisaDowntownGal responded, "Yes." Upon questioning, Janow stated that there was conversation about LisaDowntownGal's age and the response was, "I'll be 15 soon in February."

Janow testified that the conversation between LisaDowntownGal and KingsCpl4u continued on November 17, 2005. Janow stated that there was no conversation of a sexual nature on that date, but there was a continuation of the discussion related to LisaDowntownGal's age. Janow said LisaDowntownGal responded by telling him to see the profile, and then she said she was 14. Janow said that based on the conversation he had between KingsCpl4U and LisaDowntownGal, he discerned that the subject was a male named David from [REDACTED] that he was a detective because he said during some conversation that he worked in a squad like "NYPD Blue" and he was not undercover.

Janow stated that he used three other fictitious identities during the course of his investigations. He said that he used the identities of YngBunny90, LilBoiBlue91 and

HottieKimNYC. Janow explained that YngBunny90 was another fictitious, 14-year old female whom he placed in different chat rooms including the "I Love New York City Cops" chat room. LilBoiBlue91 was created for a different case involving a police officer who liked young boys. He said that LilBoiBlue91 was supposed to be a 14-year old boy who was somewhat confused about his sexuality. He further explained that he used the LilBoiBlue91 identity in this case as a person on KingsCpl4U's buddy list. This would allow Janow to know when KingsCpl4U was signed on and signed off at times when he blocked LisaDowntownGal from instant messaging him.

Janow testified that HottieKimNYC was specifically created for the case involving KingsCpl4U to attempt to get him behind a computer and to come to a meeting. This was done so that they could make a positive identification of the person behind the KingsCpl4U screen name.

Janow stated that in November 2005 YngBunny90 was in the "I Love New York City Cops" chat room when KingsCpl4U made contact with her just as he had done with LisaDowntownGal back in August 2005. Janow said that there were five, instant messaging contacts between them which was captured by DeadAIM (DX 4A).

YngBunny90 sent an e-mail with a picture attachment to KingsCpl4U (DX 4B). A profile was created for YngBunny90 (DX 4C), where she listed her name as Terri, that she was 14 years old and from New York City. The picture sent by YngBunny90 was blown up (DX 4D), and there was a chat between YngBunny90 and KingsCpl4U on November 11, 2005, and a continuation of that chat (DX 4E and 4F).

Janow explained that on November 11, 2005 KingsCpl4U contacted YngBunny90 and asked her if she had any "naughty pics." YngBunny90 responded that she did not have any such pictures, but that a friend did take one of her on the beach. KingsCpl4U

requested that she send it and Janow said he did. During the conversation with YngBunny90, KingsCpl4U asked when she was going to be 15. He then asked if she was "oral" and whether she liked "giving head?" When she replied, "Yes," KingsCpl4U asked, "spit or swallow?" KingsCpl4U continued the conversation by asking, "You like to get eaten?" and when YngBunny90 replied which one he was talking about, KingsCpl4U replied, "Getting your pussy eaten." He informed YngBunny90 that he loves doing that. YngBunny90 inquired as to why is it so good and KingsCpl4U responded that "OH You'd cum you'd be in heaven."

With regard to the photographs sent to KingsCpl4U from YngBunny90, Janow testified that the first photograph he sent to represent YngBunny90 was of a female undercover detective (DX 4B).⁴ Janow requested that the photograph of the 20 + year old detective be regressed to the age of 14. He explained that the photograph was sent to the National Center for Missing and Exploited Children who did an age regression of the photo as a service they perform for law enforcement agencies. The second photograph sent on November 11, 2005 was purchased from a stock photo house and it was a picture of a girl walking on the beach.⁵

Janow testified that the chat sessions continued between KingsCpl4U and YngBunny90. He said that on November 16, 2005 they had an extensive chat which became sexual. The conversation proceeded as follows:

YngBunny90: i went to this lam [lame] sweet 16 party

KingsCpl4U: GET LAID?

⁴ The photograph was a headshot of a teenage female wearing a winter jacket with fur. The enlarged version is DX 4D.

⁵ The photograph was a rearview of a young female walking on the beach in a bikini.

YngBunny90: NO did you?
KingsCpl4U: NO I JERKED OFF LOL
YngBunny90: really what's that like
KingsCpl4U: YEA I LOVE DOING IT
YngBunny90 never saw a guy do it
KingsCpl4U: ID DO IT FOR YOU

Janow stated that as he continued the chat, he told KingsCpl4U that he would be staying home alone for the first time. KingsCpl4U asked if YngBunny90 wanted him to come by. YngBunny90 stated that her mother would be leaving either December 1st or 2nd and KingsCpl4U responded that he was going on vacation to Disney from December 2nd to 9th. He also advised YngBunny90 that he would be around December 1st and, "WANT ME TO COME LICK YOU?"

Janow said that the chats continued on February 3, 2006 (DX 4K). He stated that although there were no sexual chats on that day, KingsCpl4U informed YngBunny90 that he was working and that he continued to ask her for pictures. Janow said he sent another picture of the undercover detective, but this time her age regressed photograph had her sitting on the hood of a BMW in front of a motel. He explained that her face was partially blocked by the baseball cap that she was wearing. Janow said the two had a short chat session on February 23, 2006. When KingsCpl4U asked YngBunny90 when would she turn 17 she replied in two years, he abruptly ended the chat with YngBunny90.

Janow testified that there were times in the chat sessions when KingsCpl4U alluded to YngBunny90 that he thought she might be a cop. Janow said in the November 16, 2005 chat, KingsCpl4U said that she might be a cop and YngBunny90 denied that she was. KingsCpl4U questioned how he would know whether or not she was a cop and

YngBunny90 told him to call her. Janow asked him if he still had her number and he stated that he does not keep things like that around.

Janow stated that in August 2005, he sent a subpoena to AOL (DX 5A) in an effort to determine who KingsCpl4U was. AOL responded to the subpoena by sending Janow a screen capture page of the account which contained information referring to the account holder as [REDACTED]. The screen capture page also included all of the other screen names attached to the account which included KingsCpl4U and another screen name "trans5363." The billing contact name was David Velez and it listed the account as having unlimited dial up by telephone as well as high-speed internet access. Janow said that once he obtained this information, he signed on to AOL and viewed all of the other member profiles. He reviewed the member profile for a screen name listed as "Trans5363" (DX 5C) which was also held by [REDACTED]. The profile stated that it was a former New York City transit cop and a paralegal. Janow explained that he figured out that the screen name, "Trans5363" stood for "Transit 5363."

Janow explained that he used this information to then search Police Department records on a Detective David Velez (the Respondent). He found that the address and phone numbers listed on the AOL account information matched Department records for the Respondent. He also noted that [REDACTED] was the name of the Respondent's wife. Since the profile listed the Respondent as a former Transit cop, Janow stated that Department records confirmed that the Respondent was a Transit Department rollover into the New York City Police Department at the time of the merger of the departments. Janow further explained that based on this information, he sent a preservation request letter (DX 6) selecting option one to AOL. AOL would then preserve all read e-mails, sent, received and deleted on the account, any internet provider connection logs and any

other information that could be captured and that had already been read by the subscriber. Later, Janow stated that he submitted a follow-up preservation request to AOL to preserve Internet Provider data regarding KingsCpl4U and Trans5363 (DX 8).⁶ Janow further stated that later on he would be able to access this information to determine if the address was assigned to a particular person at a certain date and time.

Janow said that at this time, KingsCpl4U began to block YngBunny90 and LisaDowntownGal. He was able to confirm this by using the LilBoiBlue91 identity to check. Since KingsCpl4U was unaware that LilBoiBlue91 existed, Janow was able to use that identity to see when KingsCpl4U signed on and off and observed that he blocked the other two screen names. (DX 7). He also wrote to AOL and requested that they preserve any IP connections for KingsCpl4U for January 15, 2006 and for Trans5363 from January 14, 2006 - January 15, 2006 pending the issuance of subpoenas. Janow testified that the subpoena was eventually issued and he preserved the data he received in regard to the subpoena (DX 8).

Janow testified that he utilized Police Department resources to obtain information about the Respondent. He stated that IAB had a computer program called "IA Pro" which was used to track complaints that came into IAB. It was also used to ascertain the telephone numbers and addresses of members of the service as well as their date of birth and other pedigree information. He explained that he was able to match information to the Respondent. Once he had a match on IA Pro, he then used the database "PEPR", the personnel index database which also listed the members of the service's name, address and commands as well as dates of assignments, specific ranks, and a listing of any special skills. Janow further explained that in this instance, PEPR listed the Respondent's

⁶ According to Janow Internet Provider or IP data refers to the series of four digit numbers, i.e., 123.2, assigned to an address when someone signs on to the internet.

special skills as a former transit police officer. He then accessed the "Face of the Nation" database which would give him access to public information. He learned that the Respondent had a single-family home and that he was married to [REDACTED] Janow stated that by narrowing down the single-family home and the occupants as being husband and wife, he was able to narrow down the possible users of the AOL account.

Janow stated that after conferral with the Manhattan District Attorney's Office, it was determined that there had not been sufficient contact between the undercover and the Respondent. Janow explained that in the end of February 2006 the Respondent had become abrupt and got offline ending communication with LisaDowntownGal and YngBunny90. A new identity was created in March 2006 who would be an adult introduced to KingsCpl4U and who would attempt to get him to come to a meeting.

A chat took place between HottieKimNYC and KingsCpl4U (DX 10 A) on March 6, 2006 which was recorded on DeadAIM. Janow testified that he set up a profile for HottieKimNYC. He obtained a photograph from the stock photo website that he forwarded to KingsCpl4U as HottieKimNYC (DX 10A-F).

Janow explained that he first sent an e-mail to KingsCpl4U as HottieKimNYC introducing her to the couple and explaining that she saw their profile and felt she would be compatible with them. On March 6, 2006, Janow noticed that KingsCpl4U was on line so another e-mail was sent as HottieKimNYC. He explained that they conversed and the Respondent explained that he was a detective and they discussed where they both lived. Janow further explained that within approximately 13 minutes, the Respondent had suggested a meeting place between the two of them. They logged off and the next morning, the Respondent commenced communication between the two of them where

they confirmed the meeting that he would be in a red truck and she would be in a black Jaguar.

Janow testified that when the Respondent logged on to the computer to chat, he used the phrase, "Hiya." He explained that this phrase for "hello" had been used throughout the chats between YngBunny90, LisaDowntownGal, and HottieKimNYC. He further explained that other people were not prevented from using this phrase, but since it was very specific and used throughout the chats, he believed that only one person was using the identity KingsCpl4U to chat. Janow stated that KingsCpl4U and HottieKimNYC set up a meeting for Floyd Bennett Field in Brooklyn. He said that an actual meeting between them did not take place, but that the Respondent was surveilled by members of Group 7 arriving for the meeting at the field on March 7, 2006 and a videotape was prepared. He also said that photographs were taken of the surveillance and provided to him (DX 11 A-T). Janow stated that the photographs showed the entrance to the field of a red, 4x4 truck, and turning onto the side road in the field. Janow explained that the truck had been previously identified. He further explained that the surveillance team had to put down their camera as the Respondent's vehicle drove past them. They were later able to capture the Respondent's vehicle as it exited the field with the license plate on the truck clearly visible in the photographs. Janow stated that the license plate traced back to the owner who was the Respondent.

Based on the information from the surveillance, Janow concluded that KingsCpl4U was the Respondent. He noted that after the Respondent went to the Floyd Bennett field and did not see HottieKimNYC's black Jaguar as planned, he left the field and cut off any future communications with her. He explained that he made copies of his desktop screen showing that KingsCpl4U, HottieKimNYC, YngBunny90 and

LisaDowntownGal were all open. However, under HottieKimNYC's screen buddy list, KingsCpl4U was offline and not on the screen in bold like the other screens (DX12A-12B). Janow concluded that from his experience handling other cases, KingsCpl4U had blocked HottieKimNYC from making any further contact. Janow had reviewed his worksheets and determined that this block of HottieKimNYC took place the same date that the meeting was scheduled at Floyd Bennett Field, March 7, 2006.

Following the Floyd Bennett Field incident, Janow testified that he presented the case to the Manhattan District Attorney's Office who advised him that the case was ready to both make an arrest and obtain the issuance of a search warrant. Janow obtained a search warrant for the Respondent's residence and two vehicles. He said that a Dell home computer and two firearms were recovered from executing the search warrant. (DX 13) An additional search warrant was obtained and the Respondent's locker was also searched which recovered a laptop computer, a bag and 21 compact discs which were subsequently vouchered. (DX 14 and DX 15 A-C).

Janow testified that one of the property Clerk invoices for the items obtained from the Respondent's locker noted a Jet Blue Customer receipt. He explained that the receipt was found in the Respondent's computer bag.⁷ It was for flights to Florida on December 2, 2005. Janow explained that in a chat between KingsCpl4U and YngBunny90, when she mentioned she would be home alone, there was a discussion that the Respondent was taking a trip to Florida with his family on that date.

The Respondent was arrested in regard to this incident and his Department identification card and shield were recovered. Janow stated that he went to One Police Plaza with the Respondent's shield and it was determined that the shield was a duplicate

⁷ DX 17 is photographs of the Respondent's locker at the command as the contents were being removed.

shield. This was noted on the Department form, "Removal/Restoration of Firearms Report" (DX 16).

Janow testified that both the laptop and desktop computers were sent to a forensic investigator for analysis. He explained that Sergeant Petrides [who at the time was a detective] would use various computer programs to access the computers, hard drives and recover data. He was looking for images, parts of words or chats stored, the times and dates the computer was used and password and sign-on information. Janow further explained that he requested Petrides to look for the three female screen names involved in this investigation as well as the Respondent's screen name. He also asked him to look for any information involving Vanessa [later identified as Vanessa Wein] who was a complainant in another case and who alleged that the Respondent had nude photographs of her. Janow asked Petrides to determine if those photographs were still on the computer.

Before Petrides completed his actual, investigative report, Janow stated that Petrides was able to recover some information. He recovered from the computer images of a nude, female listed as Vanessa (DX 18). Janow testified that he and a female detective took the photographs to the residence of Wein. She identified the photographs to be the ones referred to in her complaint against the Respondent. In his completed report Petrides was able to recover emails and messages for HottieKimNYC, YngBunny90 and LisaDowntownGal from both computers (DX 19 p. 23, 26, 32-134). He also said that the images of Wein were indicated in the report prepared by Petrides (DX 19 pp. 122-125; 127, 129, 130-131).

Janow testified that the photographic images of Wein were actually stored in a My Documents subfolder on the Respondent's computer. He said the subfolder, i930 and

i860 were actually stored where a Nextel cellular phone could retrieve the images. He explained that he had a complaint that the Respondent had the images of Wein stored on a Nextel cellular phone.

Janow said that the Respondent was not subjected to an immediate Official Department Interview following his arrest because the Department had an agreement with the New York District Attorney's Office not to commence administrative proceedings until the criminal proceedings had been concluded. Janow stated that the Respondent was initially charged with a felony count of attempted dissemination of indecent material to a minor and attempted endangering the welfare of a child. The charges were eventually reduced to misdemeanors and the Respondent then pleaded guilty to the charges. Janow was then able to obtain the criminal, investigative file from the IAB unit who was handling the criminal case and proceed with this case administratively.⁸

Prior to proceeding in this case administratively, Janow testified that the IAB unit conducting the criminal investigation did the interview of the Respondent. Janow provided the forensic investigation report prepared by Petrides and all other background information he had to a Lieutenant DeFazio. DeFazio's group then went over the paperwork with Janow and prepared questions for the Respondent's Official Department Interview. Approximately two to three weeks later, Janow said the case was referred back to him. He then interviewed Wein again who gave him additional information regarding the nude photographs of her. He then conducted two additional interviews of the Respondent's neighbors who allegedly viewed the nude photographs of Wein shown

⁸ Janow explained that aside from knowing that the Respondent pleaded guilty in the criminal matter, he was not privy to the events of the criminal case. The case was assigned to a separate IAB unit to conduct the criminal portion of the case.

to them by the Respondent. Janow testified that based on this information, he then contacted the Department Advocate's Office to amend the charges pending against the Respondent to include false official statements.

During cross-examination Janow testified that he never received any certification from any agency to conduct computer investigations. He acknowledged that the Internet Crimes Against Children taskforce (ICAC) provides training and technical assistance to law enforcement officials who are investigating computer crimes against children. He stated that he was unaware that the ICAC gave courses to investigators. He acknowledged that the only training he received from the Federal government was the Federal Bureau of Investigations physical surveillance class which had nothing to do with computer crimes.

When asked what relevant training he received, Janow stated that approximately a year and a half ago he attended the Manhattan District Attorney's Sex Crime Training. He explained that the training entailed online investigations, working with different law enforcement bodies, laws that are used to prosecute people for different sex crimes and internet crimes involving children. Janow said the training was at of the office of the Chief of Manhattan Sex Crimes and that there were numerous instructors. Janow said that he also received training at the Department in 2003 or 2004. He attended the Department's sex crimes class as well as the criminal investigator's course. He explained that he learned about the exploitation of children on the internet. He further explained that his course was taught by Detective Jimmy Held, who was vice enforcement in crimes against children. Janow said he did not know who trained Held. He said that the course lasted approximately two weeks.

Janow stated that he learned how to function in an undercover capacity from the sex crimes class he took, the Manhattan District Attorney's Office course and from conferrals he had with the DA's Office regarding his investigations. He said that he received written material in his training courses, but he did not receive actual scripts on what to say. Janow acknowledged that when acting in an undercover capacity, he had to be careful not to initiate conversations about sexual topics or sexual activities. He agreed that if he induced a person to commit a crime that could be considered entrapment. Janow stated that a portion of his training did address the issue of entrapment, but he could not break down in hours how much time was spent on the topic.

Janow testified that he was not clear on how to set up an AOL master account and whether he would have to enter background information such as date of birth to set up the account. He explained that to conduct his investigation, he did not have to set up a master account. IAB had several AOL law enforcement accounts available and he just added the screen names he wanted to use to the existing accounts which did not require entering a date of birth. Janow stated that since he did not have an AOL account, he was unclear as to whether a 15-year-old person could set up an AOL account. He was aware that a 15-year old could access a public chat room. Janow said that "I Love New York City Cops" is a public chat room and that he was unaware of any restrictions to accessing the chat room. He stated that he had been monitoring the chat room at least six months prior to commencing his investigation in this matter on August 29, 2005. He further stated that he had numerous chats which commenced in that chat room.

Janow explained that the profile of LisaDowntownGal was not created as a target for this investigation. He explained that it was used in numerous investigations to conduct a proactive investigation to allow entry into a public chat room. Janow stated

that he entered the public chat room on August 19, 2005. He acknowledged that he could see who was chatting by their screen names. He also acknowledged that one could chat by sending a message in the public forum or click on a screen name and send a private message. Janow stated that on August 19, 2005, he remained on the sidelines until KingsCpl4U sent him a message. He explained that he could not recall how long he was in the chat room before he received a message from the Respondent. He acknowledged that he did not think to capture that information so that he could determine how long he was online before the Respondent reached out to him. He also did not capture the exact time that KingsCpl4U reached out to him. He explained that the software he uses does not capture information in that way. He further explained that he knows from experience that AOL does not maintain those records either. Janow said that he could not determine if the Respondent had been chatting before he sent him a message.

Janow acknowledged that he sent a reply to a KingsCpl4U message which was not preserved, but KingsCpl4U had already signed off. Janow agreed that the reply stated, "HI, you sent me a message." Janow also agreed that he prepared a worksheet to this effect and labeled the worksheet, "Endangering the Welfare of a Child." He acknowledged that the only information he had at that point was that KingsCpl4U had sent him a message which he could not recall and he replied to that message. Janow admitted that he then prepared a subpoena endorsed by his Commanding Officer which was dated August 18, 2005, the day before he heard from KingsCpl4U. He also added KingsCpl4U to his buddy list. Janow admitted that from the initial contact by KingsCpl4U, he did not hear from him again until September 1, 2005.

Janow acknowledged that when he saw KingsCpl4U online on September 1, 2005, he could not recall whether it was because he was on his buddy list or because he

was in the public chat room. He admitted that he commenced conversation with KingsCpl4U on that date. Janow said that the Respondent identified himself by his real information such as his name, the borough that he lives and that he is a detective. Janow said to his knowledge, it was not a violation of the Patrol Guide for the Respondent to simply identify himself as a member of the service in a public chat room. Janow said that the Respondent asked for a picture. Janow acknowledged that it was common in chat rooms for someone to ask for a picture to verify someone else's identification.

Janow stated that during the six minute conversation he had with the Respondent on September 1, 2005, the Respondent asked LisaDowntownGal for her age and she said she was almost 15 and the Respondent made reference to getting into trouble. After LisaDowntownGal said you cannot get in trouble for chatting, the Respondent signed off shortly thereafter. Janow acknowledged that even though the exchange between the Respondent and LisaDowntownGal was contained in her profile, he acknowledged that profile information can be false.

Janow acknowledged that the next time he chatted with the Respondent was on September 29, 2005. Within two minutes of the conversation, the Respondent asked LisaDowntownGal how old she was and whether she had any pictures. Janow admitted that the last three communications between LisaDowntownGal and the Respondent was initiated by him. When asked where in these conversations the Respondent asked LisaDowntownGal to do something sexual, Janow responded on September 29, 2005. He explained that when the Respondent said that he was very "oral" and "loved to eat pussy," he took that to be a discussion of a sexual act.

Janow admitted that during the November 2, 2005 conversation, he tried to get the Respondent to tell him a secret and to talk to him on the telephone, but neither took place.

During the next and final communication on November 17, 2005, the Respondent continues to ask for a picture. Janow admits that the Respondent never sent a picture that was not a part of his profile. He admitted that the Respondent never asked LisaDowntownGal for her address, telephone number and never tried to set up a meeting.

With regard to YngBunny90, Janow acknowledged that he was in the chat room when he received an Instant Message (IM) from the Respondent.⁹ He acknowledged that shortly after they began chatting, the Respondent asked for a picture and he sent one. Janow stated that he sent a picture that the Center for Missing and Exploited Children had regressed. He said that the picture represented someone who was 14 years old. He stated that the picture did not look like someone in their 20s or 50s. When the Respondent asked for a "naughty picture," he sent a stock photo of the girl on the beach. Janow acknowledged that the discussion of having a web cam was brought up by him, not the Respondent. Janow admitted that once the Respondent admitted to having one, his goal was to get him to use it to send images. Janow agreed that the Respondent never offered to use the web cam and never asked YngBunny90 for her telephone number although her number was offered to the Respondent. He also agreed that the Respondent never asked for YngBunny90's address and he never sent her any photographs of himself.

Janow testified that there was a time after November 16, 2005 when his investigation revealed that the Respondent blocked receiving any e-mail from either LisaDowntownGal or YngBunny90. On February 3, 2006, YngBunny90 was able to send the Respondent a picture of "herself" via e-mail. Janow acknowledged that the next and last communication between them was on February 23, 2006. The Respondent said he would speak to her when she turned 17 and that ended their communication.

⁹ An instant message or "IM" is a message that pops up on the screen from someone on one's AOL buddy list requesting to chat on-line.

Janow acknowledged that the HottieKimNYC profile was for a single, 27-year old nurse from Bayside and that her profile was established to see if the Respondent would initiate communication with her in an effort to get the Respondent to meet.

Janow acknowledged that the Respondent was arrested on March 14, 2006 and that he was the arresting officer. He also admitted that he signed the felony complaint that would form the basis for the arrest. Janow agreed the felony complaint noted three sexual acts that the Respondent wanted the female to perform. They included: touching her breasts; inserting her fingers in her vagina; and inserting foreign objects in her vagina. Janow acknowledged that he never testified to any of these three acts during his testimony on the Department's direct case. He also acknowledged that none of the chats that were in evidence involving the three, fictitious identities, LisaDowntownGal, YngBunny90 or HottieKimNYC have chats involving these three acts. Janow admitted that he was the deponent in the felony complaint and that he signed his name and shield number as well as dated the complaint. Janow admitted that a false statement in a felony complaint was punishable as a misdemeanor under the penal law. In explanation, Janow testified that the Assistant District Attorney used felony complaints in other cases to draft the complaint in this matter. He said that there were errors that had to be changed. He stated that he did not believe this was the felony complaint that was actually presented to the judge in this matter.

Janow was questioned regarding the Nextel phone. He acknowledged that during the course of his testimony he stated that the Nextel cell phone was "of interest" to him. He stated that even though he was the arresting officer and saw a Nextel phone in the Respondent's car, he never vouchered the phone. He explained that at the time of the Respondent's arrest, the phone was not needed at the time for the criminal complaint.

He acknowledged that he later learned about an allegation that photographs were transferred to a Nextel phone and shown to people by the Respondent. Janow admitted that after learning this information, he did not attempt to obtain any of the Respondent's records maintained by Nextel. Janow testified that he had no knowledge about the date of purchase, the make, model or capacity of the Respondent's Nextel phone.

Janow testified that there are a number of ways that a person can download pictures to a cell phone. He explained that if the phone has a camera, the photograph can be taken. The photograph can be e-mailed to the cell phone as an attachment or downloaded to the cell phone depending on the type of cell phone. Janow stated that he did not know the e-mail address of the Respondent's cell phone. He also stated that he did not have information that the Respondent had downloaded images from his laptop or personal computer to his cell phone. Janow said that there was no cable recovered pursuant to a search warrant of the Respondent's home which would have allowed him to download images to his Nextel phone. He said that a Nextel cable was recovered from his computer bag.

Janow stated that he interviewed Wein in April 2006 regarding a prior IAB allegation that the Respondent had photographs of her. He said that she was between 20 and 21 years of age at the time of the interview. She requested that two people be in attendance during her interview, so he allowed a Mrs. [REDACTED] and her daughter to be present. When questioned as to whether this was a good investigatory technique to allow others to be present during the interview, Janow stated that he was just showing something to Wein and they had nothing to do with the case. Janow said that he did not record the interview. The two witnesses to the interview were friends and neighbors of Wein as well as neighbors of the Respondent.

Janow acknowledged that during the Respondent's Official Department Interview the Respondent denied showing images of Vanessa to anyone and this denial formed the basis of a false statement charge being filed against the Respondent. Janow testified that he interviewed Wein again after the conclusion of the Respondent's criminal case and after his Official Department Interview sometime in April 2006. Wein advised him that the Respondent did not take the pictures of her, but that they had been taken by a boyfriend of hers when she was about 17 years old. She explained that she used to baby sit for the Respondent, and during that time, she used the Respondent's computer to view the images of herself. She further explained that friends of hers were shown these pictures by the Respondent.

Janow admitted that he did not tape record the interview of Wein, but that there were notes taken of the interview, and the next day he prepared a worksheet about the interview. He acknowledged that his notes and his final report did not mention that the Respondent showed photos to neighbors in a deli.

Janow acknowledged that subsequent to the Respondent's Official Department Interview Wein was interviewed again by telephone. Janow acknowledged that he did not tape record the telephone interview or prepare a worksheet about the interview. He explained that since the criminal case against the Respondent had been closed, he prepared a "49" in this matter.¹⁰ Janow admitted that he did ask Wein questions. He asked her who viewed the photographs of her and she gave the name, Jessica "J. Bartha" and stated that she works at New Dutch Deli.¹¹ Janow admitted that he did not write down everything that Wein said, but he did jot down the name Jessica, the name of the

¹⁰ A "49" is the name for a Police Department memorandum.

¹¹ Jessica was later identified as Jessica Bartha (hereinafter referred to as "J. Bartha").

deli and her telephone number. He denied asking Wein if anyone else viewed the photographs. Janow acknowledged that he tape recorded the conversation he had with J. Bartha an hour and a half after talking to Wein, but he did not tape record his conversation with Wein who was the complainant in the false statement allegation.

When Janow was asked whether there was a procedure in IAB to reopen a case for the purpose of memorializing work, Janow explained that even though the Respondent's criminal case was closed, there still was an open administrative case. He explained that charges were requested against the Respondent in the administrative case as well as amended charges.

Janow acknowledged that he contacted J. Bartha by telephone to arrange an interview at a later time. He informed her that Wein had given him her name and contact information. Janow admitted that he may have told J. Bartha that he was the investigator assigned to the David Velez case and that he was the arresting officer. Janow concurred that he told J. Bartha that he learned from Wein that the Respondent showed her (J. Bartha) nude pictures of Wein and J. Bartha agreed to the statement. When asked whether he thought this was a good investigatory tactic to tell the witness what happened rather than ask the witness an open-ended question such as, "What happened?" Janow stated that he did not think there was any other way to approach the topic with J. Bartha other than to ask her directly. Janow also admitted to telling J. Bartha that the Respondent already admitted to what he had done by pleading to a misdemeanor. He also told her why he did not plead to a felony. Janow stated that the criminal plea was a matter of public record.

Janow agreed that he showed J. Bartha 8x10 photographs of Wein for identification even though the allegation was that J. Bartha saw nude photographs of

Wein on a cell phone. He also admitted that he showed J. Bartha a picture of a blue cell phone and said that the Respondent's cell phone looked like this and J. Bartha concurred. Janow agreed that he never obtained any information from Nextel regarding any possible account that the Respondent had with them nor subpoenaed any records from Nextel which showed whether he had a particular cell phone with them.

Janow admitted that during his telephone conversation with J. Bartha she recalled that the Respondent showed her the nude pictures of Wein three days before his arrest. Janow admitted that the Respondent was arrested on March 14, 2006 and he was conversing with J. Bartha in June 2007 so the elapse of time was approximately 15 months. Janow said he never inquired of J. Bartha how she recalled the date. It was stipulated between the parties that Janow spoke to J. Bartha on June 6, 2007 as well as Patricia Bartha (hereinafter, "P. Bartha") and informed them that he did not think the Respondent would be in the Police Department much longer. Janow acknowledged that he does not determine whether someone will be disciplined or not, but that the decision is made by the Police Commissioner.

During redirect examination, Janow stated that there was no record of the initial contact between KingsCpl4U and LisaDowntownGal based on the DeadAIM recording program. He explained that DeadAIM only records a reply to a chat. By the time LisaDowntownGal responded to KingsCpl4U's initial contact, he had already signed off so DeadAIM only recorded her reply. Janow also explained the methodology by which he engages in chat sessions. He explained that he followed procedure given to him by the Manhattan District Attorney's Office. He further explained that he was told once initial contact is made to his online identity, he can initiate chats on a later date. He said that his screen name did not make the initial chat; someone contacted his screen name first.

Janow also said that he mentioned a web cam in his chats because if the Respondent had communicated by web cam, it would have captured him behind the computer in real time.

Janow testified that he requested AOL information on the Respondent by way of subpoena. The date on the subpoena was August 18, 2005, but the correct date was August 19, 2005. Janow said that he prepared a worksheet close to the date of the subpoena noting the correct information (DX 20). Janow also testified that he did not prepare worksheets in the case following the end of the Respondent's criminal case because the case file was closed. Janow said he conferred with his supervisors and the Department Advocate's Office and a decision was made to prefer charges against the Respondent. Janow stated that since he did not have an open a case to prepare worksheets and attachments, he prepared a 49 which outlined his investigative steps.

With regard to the Nextel cell phone, Janow explained that at the time of the commencement of the investigation and his conferral with the Manhattan District Attorney's Office, it was decided that they would not subpoena or seek a search warrant for the Respondent's cell phone because the entire investigation rested on evidence that the chats occurred online on the computer and the DA's Office felt they could not show proof in a warrant why the cell phone was needed. Janow further explained that he did not seek to subpoena the cell phone later when it became an issue in the case because the cell phone was not related to anything with a criminal component. Janow stated that he took a picture of the i860 Nextel phone that he downloaded from the internet to the J. Bartha interview because he wanted her to identify whether that was the cell phone she was shown.

During further cross-examination, Janow stated that he did not seek to obtain an administrative subpoena for the administrative false statement trial because he was

advised that subpoenas were used for criminal matters. Janow acknowledged, however, that he did not use a criminal subpoena to obtain the AOL information but that he used an administrative subpoena signed by the Deputy Commissioner of Legal Matters.

During questioning by the Court, Janow stated that the Respondent's felony complaint was reduced to a misdemeanor and he pleaded guilty to attempted endangering the welfare of a child.

Sergeant Theodore Petrides

Petrides is a 15-year member of the Department currently assigned to the 5 Precinct in Manhattan where he has been assigned for one week since his appointment to the rank of sergeant. He stated that prior to that assignment; he worked in IAB Group No. 7 for two years. He worked as a computer forensics data recovery person. He explained that when an investigator has a case involving computers and he or she thinks that data may get lost or corrupted, the investigators will contact his unit. The computer is taken to his lab where imaging is done of the computer's hard drive. Petrides further explained that his office works with the investigator to determine what criteria the investigator needs to make his case and a search will be made of the computer involved to enhance that case.

Once the data is found, Petrides testified that the hard drive is removed from the computer and hooked up to another write-blocking device. That device isolates the dates and times in the subject drive. Then the software, EnCase, is used to preview the hard drive and make an image of it. The end result is that there is now a duplicate hard drive created. The drive is then saved as evidence files. Petrides said he would then conduct his own investigation and once completed, the data would be archived to a compact disc (CD) or DVD in case the drive is needed at a future date. He explained that the computer

is not altered in any way. Safeguards are taken to insure that the dates and times stored on the hard drive of the computer are preserved. He further explained that in many cases, the actual dates are important to the investigation and must be preserved.

Petrides stated that he received various training at the Police Department. Prior to working in IAB, he said that he attended the computer crimes course where he attended school to learn about the EnCase software which is used to recover data. He said that he attended weekly EnCase courses in Virginia which consisted of a minimum of 50-60 hours. He also attended school for computer forensics. With regard to certifications, Petrides said he is a Microsoft Certified System Engineer in NT 4.0 which was an operating system. He also is A+ certified in basic personal computer repair. He also has an Associates Degree in Occupational Studies.

In March 2006, Petrides said he was present when the team arrested the Respondent. He said that he prepared the forensics report on the computer after it was brought back to the lab. He explained that the Investigating Officer, Janow, made a request for information and he generated a report in response to the request. Petrides identified a report that he generated (DX 19) because it contained his signature at the end and the report was in a format that he prepared. He said that he prepared the report in July 2006. He stated that he first previewed the Respondent's computers in April 2006 and started his full analysis in May 2006.

Petrides testified that Janow requested specific information and any photographs for three screen names, YngBunny90, LisaDowntownGal, and HottieKimNYC contained in two computers, a Dell Dimension 4300 desktop and a Dell Inspiron 1000 laptop. He said that he used the EnCase program to analyze the computers. He defined a "search hit" as a request from an investigator to search for a specific name or word. If the

specific name or word was found, it was considered a search hit. Petrides said that he would then look at the content of how the hit was used. If it was found in a chat, it meant the person was involved in a chat at some point since it was on the computer. He explained that since there are portions of the hard drive that are not used, the computer stores temporary data there, but as additional information is saved to the computer, the temporary data gets overwritten. He further explained that this is why some chats are stored in its entirety and some are not. He noted that in his forensic report, the unused portion of the computer is referred to as "unallocated clusters" [See DX 19, page 11].

Petrides stated that in his report (DX 19) on page eight, the search hits found in the Respondent's case are delineated. For example, he stated that he searched for YngBunny90. He found 105 search hits for that name and that he went through them and found chats and indications that the screen name was used on the computer. Petrides said that he uses a technique called a preview to look at a computer. He explained that the drive is taken out of the computer and hooked up to a write blocker program. The program allows one to look at the drive quickly and review pictures to see if there is pornography. If no pornography is found, the computer can be set aside and further investigation is not needed. Petrides said that he did a preview of the Respondent's computers in April. Janow asked him to look into the computer and find anything related to Vanessa [Wein]. Petrides stated that he found pictures on the computer related to Vanessa.

Petrides was shown 12 images and he testified that those were the images he recovered from the Respondent's hard drive (DX 18). He noted that he referenced the images in his forensic report on pages 122-131 except pages 126 and 128. He said that

the images were stored on the Respondent's computer and placed in a folder i860 and also stored as wallpaper as i870 Vanessa 110.gif.

During cross-examination, Petrides acknowledged that he stated in his forensic report that the Respondent appeared to not have chatted with any under aged children aside from the undercover officer. He based this information on the chats found on both of the Respondent's computers and a review of the unallocated space on both computers. He explained, however, that he did not go through the Respondent's entire buddy list and contact everyone that was listed. With regard to the Wein photographs, Petrides testified that he recovered all of the images from the desktop. None were on the laptop. He explained that the gif format stood for graphic interface format and it represented the bite size and texture of the images. Petrides said that he thought the gif format of storage was capable of being downloaded as wallpaper or background to a cell phone, but he was not sure. The i860 and i870 wallpaper meant that the Wein images were in a folder on the computer.

Petrides testified that he could not recall whether there was any mention that some of the photographs could have been downloaded to a Nextel phone. He stated that his job was to just do a picture search. He explained that since he found the pictures to appear to be child pornography, he found them to be inappropriate and included them in his forensic report. Petrides said that he was never asked to investigate whether the Wein photographs were downloaded anywhere, including a cell phone. He stated that he would have needed the cell phones to do such a comparison. Petrides acknowledged that he never contacted Nextel to see if the Respondent had an account with them because that was not his job and he was not the investigator on the case.

Petrides testified that he could not recall whether the Respondent's desktop had a CD drive. He could not recall whether the desktop had a writer component whereby the computer could record information from a CD that was placed in it. He stated that there was nothing contained in his forensic report or anywhere else which could help him answer these questions. He explained that the existence of a CD-ROM had no forensic significance to him in and of itself. He stated that upon his review of the computer, it did have the Windows XP operating system which would allow the recording of photos to a CD. He said that someone would have to physically drag the file and drop it in order for it to be saved to a CD.

Petrides was asked to refer to his forensic report on p.122. It contained on the top portion, images of Wein under the file name, "Vanessa.110.gif." It had a file created date of October 10, 2005 and Petrides explained that that was the date that the picture was created on the hard drive. It also had a "last written" date of December 28, 2004. He explained that this likely meant the image was moved somewhere else and the December date is the date it was created in the new location. The photograph also stated, "Date modified," and the date was January 7, 2006. Petrides said that the photograph was altered in some manner on that date. He stated that it was possible that the photograph was in another format. In order to download the photograph to a cell phone, the format would have to be changed and possibly to the gif format. Someone would have to change the photo to that format. Petrides stated that the last time the photograph was accessed was in January 2006. He said that there is no evidence on the computer that the file was accessed in March 2006. He stated that this information regarding creation, last written and modification also applied to the other photographs of Wein.

During redirect examination, Petrides testified that his testimony did not exclude the possibility that the photographs of Wein appeared some place else on the hard drive prior to December 28, 2004 and was overwritten. He explained that his testimony only states that the photographs were put in the folder on the December date and modified January 7, 2006.

During questioning by the Court, using the photograph on page 122, (DX 19), Petrides defined logical space versus physical space. He stated that the physical size of the image was 32,768, but it only filled 28,744 of it. The remainder of the space is called slack space and his search for terms also looked in those spaces and did not find any additional data to report. Petrides was questioned as to whether insertion of a CD containing pictures into the CD-ROM of the computer which was programmed with Windows XP would automatically save the images. He explained that Windows XP automatically runs the program and one would see the bar containing all of the images. He stated that Windows will ask where the images should be played, or if such images had been played in the past, it would open up the folder and one would see thumbnails of the photos automatically. He explained that once the pictures are read they will be in a temporary internet folder because they will be viewed by the computer. He further explained that even after the CD is removed, there could still be some residual left on the computer.

With respect to the Wein file, Petrides stated that the photographs were created on December 28, 2004, and then the pictures were put into a folder on October 10, 2005. Then someone either manually or through software created subfolders i860 and i870 wallpaper, and put the Wein photographs in there.

During further cross-examination, Petrides stated that he did not know whether Windows XP had a mechanism to turn off the automatic feature of running the contents of a CD inserted. He said that once the temporary file was created, turning off the computer, logging off or even pulling the plug for the computer out of the wall will not delete the temporary file created on the hard drive.

During redirect examination, Petrides stated that using the image on page 122, the path is \Velez\C\documents and settings\user\my documents\i860 and i870 wallpaper\the gif. He explained that purchasing a cell phone with software could create a path similar to the above, but someone would still have to have put the data in the folder.

Vanessa Wein

Wein is a 23-year old female who has resided in [REDACTED] county for her entire life. She testified that she is currently in training to obtain her real estate license. She said that she resides with her father, two brothers, her father's fiancée and their baby. Wein said that she is familiar with the Respondent because he is a neighbor of hers and she used to baby sit for his six-year-old daughter when she first met the Respondent at age 16. Wein stated that the Respondent has been married the entire time she has known him and his wife's name is [REDACTED]. She described her relationship with the Respondent as friendly at the time she babysat for him. She described her relationship with [REDACTED] as a big sister. Wein explained that she would go out with the Respondent's family shopping, eating and to the tattoo parlor.

Wein testified that her relationship with the Respondent began to change when she turned 17 years old. She stated that she began to date boys and the Respondent would make nasty remarks. She recalled the Respondent saying, "I see better heads

coming out of zippers.” Wein said she took the reference to mean “penis” and she thought the Respondent meant that he thought her boyfriend was gay. Wein said the Respondent also got angry with her when she refused to perform a sexual “threesome” with him and his wife. Wein said there was one other thing that she believed made the Respondent mad. She explained that she had taken nude photographs of herself for her eyes and her boyfriend’s eyes only. She further explained that during the time that she was babysitting the Respondent’s daughter, she had free reign of his house, including keys to his house. One day she went to the Respondent’s house with a compact disc containing the nude pictures. She explained that it was before the time that she was supposed to pick up the Respondent’s daughter from school. She opened the disc on the Respondent’s computer. Wein testified that she was unaware that once she opened the disc on the computer and removed the disc, the pictures would be stored there. Wein stated that she learned later on that the Respondent made copies of her nude photographs.

Wein estimated that this took place sometime when she was 17 years old. She said that she learned of the existence of the pictures from the Respondent’s wife when she confronted her on the street a year later. Wein said that after the confrontation, she went to the Respondent’s house and asked him for the photographs. She stated that the Respondent handed her a disc which she took home and destroyed. Wein said that following this, she learned that the Respondent gave nude photographs of her on a disc to someone else. She could not testify whether the person actually viewed the nude photographs of her.

Wein said that at some point later on, her brother came home and informed her that the Respondent had given nude photographs of her to a group called the Rough Rider Group. Wein said that the group was able to describe what the pictures looked like to her

brother. Wein testified that sometime before the Respondent was arrested, she learned from two good friends who were neighbors, P. Bartha and her daughter J. Bartha, that they also had seen the nude photographs of her while in a deli.

Wein testified that on or about March 11, 2006 between 12:00 p.m. and 1:00 p.m., she walked into the local deli in her neighborhood called New Dutch Farms. She was on her way to training. She saw P. Bartha and the Respondent in the deli, and J. Bartha was behind the cash register. Wein said P. Bartha was talking to the Respondent and she just gave her a "look" before purchasing cigarettes, a soda and leaving the deli. Wein said the Respondent either called her a "slut" or a "skank" before she exited the deli. Wein explained that the Respondent was in the right side of the deli when she observed him close to the deli case. Wein said she later learned that the Respondent asked J. and P. Bartha if they wanted to see what a pig looks like and he opened his cell phone and showed them nude photographs of her while they were in the deli.

Wein stated that sometime following the Respondent's arrest, either in April 2005 or April 2006, she was interviewed by Janow. She recalled being interviewed by him on either two or three occasions. She said that one interview was in person and one was over the telephone. She explained that she learned from Janow that the Respondent had photographs of her. She testified that she was shown nude images of herself by Janow and they were of the photographs she had previously taken (DX 18 A-L). Janow inquired about when the photographs were taken and how the Respondent could have gotten possession of them. Wein said she explained to him about when and how she took the pictures and that she used the Respondent's computer to observe the pictures.

Wein said that following her discussion with Janow, she learned that the Respondent also had images of her on his cell phone, so she called Janow and gave him

the names of J. and P. Bartha who viewed the images in the deli. Wein testified that she never had a sexual relationship with either the Respondent or his wife. She also stated that she never gave the Respondent permission to share her photographs with anyone. She said that she learned that the Respondent went in other stores in the neighborhood and "flashed" his cell phone with her images.

During cross-examination, Wein acknowledged that she never saw the nude pictures of herself on any cell phone. She stated that she believed the Respondent obtained copies of the photographs from a device on his computer. She said that her boyfriend also had copies of the pictures. Wein stated that she never broke up with that boyfriend and they are still seeing each other. Wein admitted that she viewed the photos on the Respondent's computer approximately six years ago and the next time she heard about them was from the Respondent's wife.

Wein stated that the photographs were never mentioned in her discussion with the Respondent's wife on the corner. The Respondent's wife simply told her that she had something on her. Wein said that she did not know what she meant. Wein recalled that it was two years after that, that she was advised that the Respondent gave a male named [REDACTED] a disc containing her nude photographs and she confronted the Respondent at his house about turning the pictures over to her. She said that she never reviewed the disc that the Respondent gave to her, she simply broke it. She said that [REDACTED] shared the pictures with her friends [REDACTED] and then destroyed them. Wein stated that she believed when she spoke to Janow, she gave him all of the names of the people who saw her nude pictures.

Wein recalled that she spoke to Janow on a couple of occasions. She recalled that he first called her. They had a face-to-face meeting when he showed her the nude

pictures, and then she called him back at a later date to advise him that others had seen the photos. Wein stated that the last time she spoke to Janow was when he advised her that an attorney from the Police Department would be contacting her about testifying at this trial.

Upon questioning by the Court, Wein stated that she viewed her own nude photographs on the Respondent's desktop computer. She said that she did not make any copies of the photographs or the compact disc; she simply viewed the photos and then removed the disc from the computer.

Patricia Bartha

P. Bartha is a lifetime resident of [REDACTED] County who has been employed as a School Crossing Guard for the past four years. P. Bartha said that she knows the Respondent because his aunt is her neighbor. She said that she has known him for the past 18 years. She described their relationship as once being friends, but now being distant since the deli incident. She stated that she has known Wein for most of her life since she was eight years old. She described their relationship as "pretty close" since Wein went to school with her children and the kids grew up together.

P. Bartha testified that on March 11, 2006 between 12:00 p.m. and 1:00 p.m., she was in the corner store called New Dutch getting her lunch since she had just gotten off of work. There were several people in the store including the Respondent. P. Bartha said that she said hello to the Respondent as she always did and he asked her if she wanted to see something on his cell phone. She thought he was going to show her a puppy, car, or house. She explained that she was close to the cash register paying for her items and her daughter was behind the register. The Respondent handed her his cell phone and she

looked at the image. It was a naked picture of Wein. P. Bartha said the Respondent clicked a button on the cell phone and she saw a second and third nude image of Wein and was shocked. She handed the cell phone back to the Respondent. P. Bartha said she asked the Respondent whose cell phone it was and he replied that it was his cell phone. The Respondent then set the cell phone up and showed it to her daughter behind the register.

P. Bartha said that she questioned the Respondent about where he obtained the photographs and he advised her that he got them from his computer. She stated that she wanted to leave the deli at that time, but Wein walked in. She recalled hearing the Respondent say, "There is the tramp now." P. Bartha stated that she left the deli at that point and went home. She stated that the Respondent may have made comments while she was viewing his cell phone, but she could not recall what. P. Bartha said that she did not mention this incident to anyone until two or three days later. She ran into a friend named [REDACTED] while working [REDACTED] informed her about the Respondent and that his name was in the newspaper. P. Bartha said she told [REDACTED] about the pictures she saw on the Respondent's cell phone. P. Bartha explained that [REDACTED] was like a mother to Wein. P. Bartha was shown pictures (DX 18) and she identified DX 18 A-D to be copies of the images she saw of Wein on the Respondent's cell phone.

During cross-examination, P. Bartha acknowledged knowing [REDACTED] from the neighborhood. She said that they lived in a small, close-knit neighborhood. She denied being close friends with the Respondent. She explained that she knew him, but she was not a close friend of his. She stated that she could not speak about whether other people in the neighborhood were close to the Respondent either. She did state that people in her neighborhood were friendly toward each other.

P. Bartha testified that she recalled the date of March 11, 2006 that the Department attorney mentioned. She stated that she recalled working on that date and that school was in session. When she was advised that that date was a Saturday, P. Bartha said that she knew the incident date was in March, but now she could not recall the exact date.¹² She acknowledged that she does not work on Saturdays. She stated that she found out that the Respondent was arrested two or three days after the incident in the deli. She explained that she was not saying that the Respondent was arrested and then he showed her the nude photograph in the deli; she said it was two or three days after the deli incident that the issue regarding the Respondent's arrest for having inappropriate chats with a 14-year old was published in the newspaper. P. Bartha said that she did not know the date of the Respondent's arrest to be March 14, 2006.

P. Bartha acknowledged that the Respondent, who was not a close friend, walked up to her in the deli to show her the nude photograph of Wein. She said that she did not notice him showing the pictures to anyone other than herself and her daughter. P. Bartha stated that she did not know in 2003 that [REDACTED] filed a complaint with IAB against the Respondent, who was then a police officer, for having nude photographs of Wein.¹³ She explained that she learned of the prior complaint when she spoke to [REDACTED] on the corner while she was working as a crossing guard.

P. Bartha acknowledged that she first spoke to two investigators from IAB in June 2007. She admitted that one of the investigators was Detective Janow. She also admitted that he spoke to her and her daughter J. Bartha at the same time and he did not separate

¹² The Court took judicial notice of the fact that March 11, 2006 was a Saturday.

¹³ There was colloquy at this proceeding that the Respondent was the subject of a 1993 Department investigation. He was accused of having nude photographs of Vanessa Wein by [REDACTED] the so-called surrogate mother of Wein. The Respondent was cleared of misconduct in that case.

them when he spoke to them. She recalled that Janow showed her a picture of the blue cell phone that allegedly belonged to the Respondent and she had independently recalled that the cell phone the Respondent had in the deli was blue. She could not recall what type of phone it was and she testified that she did not tell Janow that the cell phone was a Nextel cell phone. P. Bartha admitted that she told Janow she only saw one, nude picture even though she admitted in Court to seeing three. She stated that she was frightened at the time.

During redirect examination, P. Bartha reiterated that she could not recall the exact date of the incident. She only recalled that the incident took place in the deli and then a few days later, she learned that the Respondent's arrest was published in the news paper. With regard to being frightened, P. Bartha explained that at first, she did not want to get involved in this matter because she had cooperated with a previous case and children were taken away from a parent. She stated that she only mentioned seeing one picture, hoping that Janow would not need her to testify, but she was still called as a witness. With regard to the pictures she identified in Court, P. Bartha explained that Janow only showed her photographs of Wein's head. She looked at the photographs shown to her in Court, and since Wein's head appeared to be in the same position, she picked out those photographs in Court.

During further cross-examination, P. Bartha acknowledged that Janow did not show her Wein's full body in the photographs. She also acknowledged telling Janow that she only observed one photo of Wein and that the photo was blurry. When asked whether she lied to a New York City detective, P. Bartha said she did not lie, she just did not tell the detective everything.

Jessica Bartha

J. Bartha is a [REDACTED] life long resident of [REDACTED] county who has been employed as a cashier at New Dutch Farms deli for the past two years. She testified that she had known the Respondent since she was a kid because he was the nephew of her next door neighbor. She stated that the Respondent was someone that she would say hello to, but she does not speak to him anymore since the deli incident. J. Bartha said that she has known Wein her whole life and they are good friends.

J. Bartha testified that approximately three days before the Respondent was arrested, he came into the deli where she worked. She thought he was going to show her a boat or a car or something, but instead, he went into his pocket, pulled out his cell phone and showed her nude photographs of Wein. Two or three seconds after he showed her the pictures, P. Bartha walked into the deli and he showed the pictures to her also. J. Bartha said the Respondent continued down the aisle and showed the pictures to other people in the store. When asked what words the Respondent said before showing her the pictures, J. Bartha recalled that the Respondent said something nasty. She stated that he said do you want to see "a dirty ho" or "a dirty slut." J. Bartha said she was at work and really could not say anything else to the Respondent. She said she was disgusted by the incident and was worried about Wein.

J. Bartha stated that the Respondent showed her the pictures near the register and then he continued down toward the deli area and showed two or three more people the pictures. She said that she did not know the names of the other two people. J. Bartha acknowledged that she was contacted by Janow. She explained that he said he needed her help in proving that "somebody had shown somebody pictures." J. Bartha was shown pictures (DX 18). She testified that she recognized DX A, B and C. When questioned by

the Court as to whether she reviewed all of the photographs, she stated that many of the photographs were copies of the same three pictures.

During cross-examination, J. Bartha stated that she remembered the incident in the deli taking place between 12:00 p.m. and 1:00 p.m. because that was the time that her mother came into the store. She also recalled the incident taking place a few days before the Respondent had been arrested. J. Bartha said that she could not recall what day of the week it was, but she knew it took place in March because the Respondent was arrested then. She explained that there was no one at the counter at that time and the Respondent walked up to her and asked her if she wanted to see something. She made an effort to reach out to Wein that same day to tell her. She said that she called a friend who had Wein's telephone number, and her mother, P. Bartha, actually told Wein about the nude photographs and that the Respondent was showing them to people. J. Bartha said that she could not recall the exact date or time of day that Wein was informed because the incident took place a year ago.

J. Bartha said that the Respondent showed her two pictures in his phone. She did not know what brand the cell phone was and she described the color as "silverish bluish." When asked which one was it, she stated that she did not remember. J. Bartha acknowledged that Janow interviewed her and her mother in June 2007 at her house. She denied that she was informed or that either her or her mother told Janow that the Respondent had a Nextel cell phone. She said that the same photographs in evidence (DX 18) were the same photos that were shown to her by Janow. She denied that Janow ever folded the pictures in half and showed them to her like that. J. Bartha denied that Janow ever showed her a phone and asked her whether the Respondent's cell phone was

similar. J. Bartha stated that her mother walked into the deli after she had been shown the photos by the Respondent.

Upon questioning by the Court, J. Bartha said that within five seconds of the Respondent showing the pictures to her, her mother walked into the deli and the Respondent showed the pictures to her mother. She said this took place in the front of the store near the door. She said that her mother did not get near the deli area.

Lieutenant Mark DeFazio

DeFazio is a 19-year member of the Department currently assigned to IAB Group No. 31 as a team leader and an investigator. He has been assigned to IAB for over four years. On or about April 25, 2007, DeFazio said that he had to conduct the Official Department Interview of the Respondent based on a request from Janow. He was advised that the case involved internet chatting with individuals purporting to be under the age of 17. He learned that a duplicate shield had been recovered from the Respondent as well as a Bushmaster rifle, a laptop and a home computer. DeFazio said that he was provided with the entire investigative file which included worksheets, photographs with attachments and videotapes. He estimated that it took him 12 hours to prepare for the interview.

During the Official Department Interview, DeFazio testified that he showed the Respondent photographs of his locker which contained a laptop computer and a computer bag and he identified the items as belonging to him (DX 17). DeFazio said that he questioned the Respondent about a duplicate detective shield that was recovered from his person when he was arrested and the Respondent admitted that he was in possession of a duplicate shield at the time of his arrest. The Respondent was also questioned about a

Bushmaster Rifle which was taken from his residence pursuant to a search warrant executed by members of IAB. DeFazio stated that the Respondent admitted under oath that the rifle did have a collapsible stock, flash suppressor and pistol grip. He informed the Respondent that he was not allowed to be in possession of such a weapon due to the ban on assault weapons.

DeFazio testified that he questioned the Respondent about his internet provider. He admitted that during the time period in question, he had an account with AOL. The Respondent acknowledged that the screen names on the AOL account belonged to him, his wife and his daughter. He admitted that the screen name KingsCpl4U was one that he used often. DeFazio stated that he showed the Respondent the internet chat logs involving KingsCpl4U as well as the profiles for KingsCpl4U and the screen names he chatted with that were in evidence ((DX 1A-1D; 3A-3D and 4A-4N). DeFazio explained that he went through each piece of evidence involving the chats and the profiles with the Respondent during his interview. He said that the Respondent had a copy of the documents also and was represented by an attorney. The Respondent confirmed that he was using the screen name KingsCpl4U in every one of the chats.

DeFazio stated that the Respondent said that he was familiar with the chats and that he was the person on the keyboard. He confirmed that the conversations were sexual in nature and that the screen names he was chatting with purported to be females 14 years of age. The Respondent did state that LisaDowntownGal and YngBunny90 stated that they were 14 and he believed that they were 14. DeFazio said that when he asked the Respondent why he continued to chat with them, he responded that he thought someone was playing a joke or kidding around.

DeFazio said that he also questioned the Respondent about mentioning to one of the screen names that he was taking a vacation to Disneyworld with his family. The Respondent admitted that he did take such a vacation in December. DeFazio stated that he also showed the Respondent pictures taken of a vehicle at Floyd Bennett field (DX 11). The Respondent confirmed that the pictures were of his vehicle and that he was driving in that vehicle alone on the date in question.

DeFazio testified that the Respondent was also questioned about a 2003 allegation. He asked the Respondent whether he had nude photographs of Wein on his home computer and his cell phone. The Respondent admitted to having nude photographs of Wein on his home computer. He explained that his wife pointed the pictures out to him following his Official Department Interview in the 2003 case. He stated that he did not erase the photographs from his computer and when his computer was broken, he took it to someone to fix. He further stated that when his computer was returned to him, he downloaded all of the files on his computer and backed them up with a CD, including the photographs of Wein. DeFazio said that he asked the Respondent if he had software to track a CD that was placed in his computer and he stated, "No." The Respondent did admit that he downloaded the nude photographs of Wein and transferred them into a program which could be transferred onto a cell phone. The Respondent denied, however, two or three times that he ever transferred the pictures onto a cell phone. DeFazio stated that the Respondent admitted that both he and his wife had Nextel phones, but he did not know whether his wife transferred Wein's photographs onto a cell phone. The Respondent said that his wife never told him that she did that.

DeFazio said that he questioned the Respondent about keeping the nude photographs of Wein on his computer even after the 2003 investigation. The Respondent

told him in sum and substance that since the 2003 case was over, he did not see a problem with keeping the photos on his computer even after he had an Official Department Interview. He told DeFazio that his wife told him someone showed the pictures to her on the computer and he was not sure how they got on the computer in the first place.

DeFazio stated that he reviewed the tape and subsequent transcript of the Respondent's Official Department Interview. He made corrections to the transcription and then a corrected transcript was ordered (DX 21 & DX 21A).

During cross-examination, DeFazio acknowledged that he was not the lead investigator on the case. He admitted that he was supposed to conduct the Official Department Interview without getting into the substance of the criminal case with any members of IAB Group 7. He explained that a few weeks after he conducted the interview, he learned that the criminal case was over, so he took the case file he received and the worksheets and returned them to Janow to complete his investigation. DeFazio stated that he could not recall if he made any recommendations to Janow. He said that the Respondent did admit that he and his wife had Nextel phones. He denied making a recommendation that the Nextel records be retrieved. He also denied that the investigative file he reviewed had any reference to the retrieval of Nextel records for the Respondent and/or his wife.

DeFazio acknowledged that one of the false statement allegations pending against the Respondent was his denial that he actually took the photographs of Wein and downloaded them to his cell phone. DeFazio admitted that as he sat in court, he had no idea what type of Nextel cell phone the Respondent had. He also admitted that he never

asked the Respondent during his interview what type of Nextel cell phone he or his wife had. Nor did he recommend that further investigation be made into this information.

DeFazio also admitted that after he learned the Respondent purchased his Bushmaster rifle from a gun shop on Long Island called the Coliseum Gun Shop, he never contacted the store to see why the gun was sold and he never recommended any follow-up investigation into the gun shop. DeFazio explained that the case was not his investigation and he would not tell another investigator how to investigate his case. He also admitted that the Respondent told him he showed his Department identification card at the store and he was allowed to purchase the rifle. DeFazio stated that he had no evidence showing that the Respondent obtained the rifle illegally.

DeFazio agreed that during his Official Department Interview, the Respondent said that after viewing photos of YngBunny90, he thought she was older than 17. He also admitted that the Respondent said once at the end of his interview that he thought someone was kidding around with him.

During questioning by the Court, DeFazio stated that the case was carried by IAB as a "C" [Corruption] case based on the allegation that the Respondent was having internet chats with a person less than 17 years old. He stated that he received the case file from Janow and after reviewing the evidence, he had questions about the computer language, the DeadAIM program, instant messaging and how the AOL chats were obtained. He went to Hudson Street and had his computer questions answered. He explained that his unit handles primarily criminal association and stolen property cases, while Group 7 handles computer crime investigations.

The Respondent's Case

The Respondent called Detective Thomas Janow as a witness and testified in his own behalf.

Detective Thomas Janow¹⁴

Janow further testified that in the course of his investigation, he received telephone calls from Wein. He said that Wein called him on June 1, 2007 and advised him for the first time of J. Bartha. Janow acknowledged that he interviewed J. and P. Bartha at their residence on June 6, 2007. He could not recall whether P. Bartha advised him that the first picture she saw of Wein on the Respondent's cell phone was blurry. Janow acknowledged that he prepared a worksheet about his interview of P. Bartha and he never mentioned the blurry photograph in the worksheet. Janow said that he could not recall if P. Bartha referred to the Respondent's cell phone by color when he spoke to her.¹⁵

The Respondent

The Respondent is a 14 ½-year member of the Department currently assigned to the Fleet Services Division. He testified that upon his appointment to the Department, he was assigned to Transit District No. 32 in Brooklyn where he rode the trains from 8:00 p.m. to 4:00 a.m. He was later assigned to Transit District No. 34, Brooklyn South Task Force, and the Auto Larceny Unit and later he was on the detective path and was assigned to the 67 Detective Squad where he worked in the Robbery Apprehension Module. He

¹⁴ Over the Department's objection, Janow was recalled as Respondent's witness because several Department witnesses had testified out of order to accommodate their court appearances.

¹⁵ It was stipulated between the parties that during Janow's interview of P. Bartha, she indicated that the Respondent had a blue cell phone.

stated that he was assigned to the squad for four or five years and made between 100-200 arrests during that time.

The Respondent said that currently he is on Modified Assignment at the Fleet Services Division and he provides security to Shop One. He stated that he has been married to his wife [REDACTED] for 14 years, that they are still together and that he has an [REDACTED] year old daughter [REDACTED]. He resides in [REDACTED] where he owns his own home and has resided there for the past six years. The Respondent testified that he is familiar with AOL. He said it is a search engine and that he utilized the services of AOL in 2005. He would use AOL for instant messaging as well as to go into chat rooms. He stated that he would occasionally visit the chat room "I Love New York Cops." He explained that the chat room was a place that police officers from the city, state and country would go to chat with people who were in that chat room.

To have conversation in an internet chat room, the Respondent testified that one could go into the open forum and type whatever he or she wanted to talk about. Or one could Instant Message (IM) someone who was in the chat room, but not engaged in conversation. One could ask the person if they wanted to chat privately and they could engage in a private conversation. The Respondent said that while in the "I Love New York Cops" chat room one could identify himself by using his real name or some other identity usually a screen name. He had three screen names in 2005. The Respondent said he and his wife used Trans5363 to conduct their business. He used KingsCpl4U as his "screw around screen name," and they had Bison 5363 as the main account screen name that he rarely used. He had other screen names just to fill up the list and his daughter had her name as a screen name.

The Respondent explained that the screen name Trans5363 referred to Transit, and "5363" was his old shield number from the Transit Police Department before the merger with the New York City Police Department. He said that he created a profile for his KingsCpl4U screen name (DX 1C). He described a profile as a way to describe or embellish oneself. He stated that his profile was about him and his wife and their "different style lifestyle." He used their real names in their profile, [REDACTED] and David from [REDACTED]. He also listed their real occupations, a detective and a paralegal.

The Respondent testified that on August 19, 2005 he was online looking around. He entered the "I Love New York Cops" chat room hoping to engage in conversation. He explained that he was looking down the row of people who were chatting and he said, "Hiya" to the females in the chat room. He recalled that he contacted the screen name LisaDowntownGal on that date and said, "Hiya." He stated that he did not attempt to review her profile before contacting her because on that date, he just randomly went down the list and said hello to people. On September 1, 2005, the Respondent said that he was engaged in conversation with LisaDowntownGal on that date. He said she chatted with him first on that date. He surmised that she had seen him on her buddy list and when he logged on, she responded by saying hello. The Respondent acknowledged that he identified himself as Dave from [REDACTED]. He said that that is where he lives and he had nothing to hide. He acknowledged that he asked LisaDowntownGal for "pics." He explained that when someone is instant messaging, many times they are "screwing around with you" so to determine authenticity he asks for pictures. The Respondent acknowledged that he asked LisaDowntownGal how old she was and he responded that she was too young to chat. He said that he had no proof at that time of her age and he had not accessed her profile at that time.

On September 29, 2005, the Respondent testified that he was online and chatting with LisaDowntownGal. He asked her how old she was twice and she responded that people do not read profiles anymore. The Respondent said that when people prepare AOL profiles they lie and assume different identities. The Respondent stated that the tone changed in the conversation when he asked LisaDowntownGal if she was sexually active. He explained that he was trying to figure out if this was someone he knew playing a game with him. The Respondent acknowledged about seven minutes later, his conversation was now, "lots of laughs. I love eating pussy." He admitted that the statement was explicit and he said that if someone was screwing around with him, the person would either stop talking to him or go deeper into the conversation to see if he would say anything else. He also admitted that shortly after that, he asked for pictures again. He wanted to see if the person was for real, but he never received pictures at that time.

The Respondent testified that he was using AOL on November 2, 2005 when he received an Instant Message from LisaDowntownGal. The Respondent said that he did not know who that person was at that time. LisaDowntownGal responded with another message asking the Respondent where he has been and he replied by asking her for pictures. He further asked her what kinds of pictures she had. He explained that he had repeatedly asked her for pictures and once she did not respond, he just wanted to know what kind of pictures she had. The Respondent acknowledged that he responded to LisaDowntownGal by telling her that he had a lot of pictures of his "cock." When she asked to see them, the Respondent told her to send her pictures first. The Respondent testified that he never had any intention of sending pictures of his anatomy on that date. The Respondent stated that he again asked LisaDowntownGal how old she was and she

responded that she was almost 15. The Respondent acknowledged that later on November 2, 2005, he received a message requesting to communicate over the telephone. He responded that they needed to communicate on the internet not on the telephone.

The Respondent stated that on November 9, 2005; he was utilizing the services of AOL and sent an Instant Message to YngBunny90. He stated that he sent the message to the "cop's chat room" and introduced himself as Dave from [REDACTED] an NYPD detective. He also admitted that he asked for "pics." The Respondent said he wanted her to authenticate herself and YngBunny90 did send pictures. He said that the picture was received in an e-mail and he thought that someone was playing with him when he saw the picture. He said that the picture looked like an identification card. He estimated that she was 17 years old or more.

The Respondent said that on November 21, 2005, he received an Instant Message. He responded to her message by asking her for "naughty pics." He explained that if she was "for real," she would send pictures of herself. The Respondent stated that he received a picture of a female in a bikini from behind. He said that he believed the person in the picture looked 17 years old or more. The Respondent testified that he received an IM asking whether he had a webcam and he responded, "Yes." He explained that a webcam is a camera that is set up on someone's computer that can transmit live images of someone. He stated that although he had a web cam on that date, he never sent any web cam images to YngBunny90 on November 11, 2005. The Respondent said he received further IMs that day requesting him to call on the telephone but he never responded on the telephone.

On November 16, 2005, the Respondent said he sent a communication to YngBunny90 just saying hello. He said that at that point, he received two pictures from

her, the bikini one and the one that looked like an identification card where she was wearing a coat. She continued to ask for a phone call and he ignored her. The Respondent stated that at some point, he blocked messages from either YngBunny90 or LisaDowntownGal. He said that they became annoying and he thought it was someone messing with him and he did not want to be bothered anymore. He further stated that once someone is blocked, they can see that you are online, but they cannot send you a message. The Respondent said that he never attempted to call, meet or send pictures to either one of them.

The Respondent testified that he received an IM from HottieKimNYC on March 6, 2006. He said it was a friendly e-mail and she asked him whether he received her e-mail. She mentioned that she saw his profile with his wife and that they look like a fun couple. The Respondent said that he decided to check out her profile and determined that she works in Manhattan and lives in Bayside, Queens. The Respondent said he sent a message to HottieKimNYC and asked her for pictures, her occupation and her age. The Respondent said HottieKimNYC had pictures in her profile and he felt that she was legitimate because she was not hiding anything.

The Respondent said that eventually he was arrested on March 14, 2006 for attempted dissemination of indecent materials to a minor which was an E Felony. He stated that on May 9, 2007, about 14 months following the arrest, he pleaded guilty to a misdemeanor for attempted endangering the welfare of a child, and had to admit in open court that he was guilty of such conduct. He testified that he received a sentence in criminal court of a conditional discharge, and ten days community service.

The Respondent acknowledged that when he was arrested, an M4 Bushmaster rifle was recovered from his premises. He said that he purchased it from a gun dealer in

Nassau County. He explained that he purchased the gun in January 2005 using his real name and address and the gun dealer made a copy of his Police Department identification card. He further explained that the gun dealer told him it was legal for him to own such a rifle as a police officer. The Respondent said that he trusted the information he was told by the licensed gun dealer. The Respondent stated that he did not know it was illegal for him to be in possession of such a firearm within the five boroughs.

The Respondent testified that he knows Wein and has known her since he moved to the neighborhood six years ago. He said that she used to baby sit his daughter when she was in kindergarten about six years ago. She baby sat for a year or two. The Respondent explained that he and his wife had a falling out with Wein about five or six years ago in late August when school was about to resume. Sometime in 2003, the Respondent said that he was interviewed by the Department in connection with an allegation that he had nude pictures of Wein. He testified that at that time, he did not have nude pictures of her. Sometime after the investigation in that case, the Respondent said that friends of Wein approached his wife and showed her nude pictures of Wein. The Respondent surmised that either his wife or Wein's friends put the pictures on his computer.

The Respondent said that he heard Wein testify that she used his computer to view nude photographs of herself. The Respondent said he learned later from his wife that there were, in fact, nude photographs of Wein on his computer. He stated that he never attempted to delete the Wein photographs himself, but he told his wife to delete the pictures and he believed that she did not delete Wein's photographs from their computer. The Respondent denied having any type of device on his computer which would capture images from a compact disc without the person being aware of it. The Respondent also

denied that his computer had a feature which would store viewed photographs to a temporary file. The Respondent said that he did take the nude photographs of Wein stored on his computer and convert them into a program which could be used as a screen saver on a cell phone. He denied that he ever downloaded the images to a cell phone or camera so that they could be viewed outside of the computer. He also denied ever showing the images to other people in 2006 either before or right after he was arrested.

The Respondent stated that he was familiar with the New Dutch Farm deli. He said it is located two blocks from his house. He testified that he used to frequent the deli. He denied that he ever went there and displayed photographs of Wein to persons inside of the deli. He said that he knew P. Bartha because she was his aunt's neighbor and she saw him as he grew up. He stated that he did not know J. Bartha until he moved into the neighborhood and visited the deli and learned that J. Bartha was P. Bartha's daughter. He said that Wein was closer to the Barthas than to him and his wife. He also said that he has no relationship with Wein or the Barthas at this time.

The Respondent testified that he is aware of the Charges and Specifications that are pending against him in this matter. He denied that he ever made any false statement to DeFazio during his Official Department Interview regarding Wein's photographs. He also denied that there was any sexual purpose to the conversations he had with YngBunny90 and LisaDowntownGal during the AOL chats.

During cross-examination, the Respondent acknowledged that he had two Official Department Interviews, one on November 20, 2003 and another on April 25, 2007 and that he was advised to answer questions truthfully and that he did, in fact, answer questions truthfully. The Respondent said that he was also truthful as he testified in Court in this matter. He also stated that he believed both YngBunny90 and

LisaDowntownGal were over the age of 17. The Respondent denied that while he had sexual chats with both YngBunny90 and LisaDowntownGal that he believed they were 14 years old. The Respondent was read a series of questions and answers from his Official Department Interview in which DeFazio asked him whether LisaDowntownGal and YngBunny90 identified themselves as being 14 years old and whether he continued to have sexual chats with them while believing they were 14 years old and the Respondent replied, "Yes." The Respondent admitted that those were questions from his interview.

The Respondent admitted that on May 9, 2007 he entered a plea of guilty to attempted endangering the welfare of a child, a class B Misdemeanor in the criminal court of the City of New York. He said that he understood by pleading guilty that it was the equivalent of being found guilty after a criminal trial. The Respondent acknowledged that he admitted on August 19, 2005 that through the use of a computer, he attempted to endanger the welfare of a child by sending text messages of a sexual nature to a person he believed to be 14 years of age. He also admitted that when the judge posed this question to him he answered, "Yes, sir."

The Respondent acknowledged that a profile helps to authenticate a person who is "screwing around" while chatting on AOL. The Respondent admitted that he would not generally engage in an hour or longer chat with someone in IMs without first checking out their profile. He read into the record a portion of LisaDowntownGal's profile under the area of marital status which stated, "No way, I'm 14. Having too much fun." The Respondent said that he took this to mean that the person was 14 or supposedly 14. He acknowledged that he chatted with LisaDowntownGal on August 19, 2005, September 1, 2005, September 29, 2005, and November 2, 2005. He testified that between the almost

three-month period from August 19, 2005 to November 17, 2005 when he was chatting with LisaDowntownGal, he never looked at her profile despite the fact that he was trying to authenticate her identity.

The Respondent reviewed a chat he had with LisaDowntownGal. He acknowledged that he identified himself as Dave from [REDACTED] and that he was a detective. He acknowledged that although he asked her for pictures, she explained that she was babysitting and did not have them with her. The Respondent admitted that he asked her to describe herself and she stated, "I'm 5'5, like a 110 pounds and have reddish-brown hair. He acknowledged that his response "MMMM, very edible." She replies, "Really," and he replied, "MMMM, yeah." The Respondent explained that he was not commenting on her profile since he did not look at it, but he was just commenting on the chat.

The Respondent acknowledged that he asked LisaDowntownGal her age and she replied, "Almost 15." He admitted that he told her that she was too young to chat. When asked whether he decided to block messages from LisaDowntownGal because she was too young, the Respondent said that he probably did because after the September 1, 2005 chat, the next one was not until September 29, 2005. The Respondent acknowledged that he had to unblock messages from her because he was able to communicate with her on September 29, 2005. The Respondent explained that he unblocks everyone that he blocks monthly in an effort to clean up his buddy list. He admitted that he did not make an affirmative decision to discontinue communication with LisaDowntownGal.

The Respondent acknowledged that he again asked LisaDowntownGal her age. He also asked her about what she has done. And after she responded by saying "kissing" and that she was embarrassed, the Respondent admitted that he told her he likes to be

“oral.” He also told her that he likes to “eat pussy.” The Respondent stated that this chat was still a part of his “authentication process” to determine who LisaDowntownGal was. He acknowledged that he asked her if she had ever had her “pussy eaten.”

The Respondent admitted that he contacted her about a month later in November and continued to ask her for “naughty pictures.” When LisaDowntownGal asked whether “topless counts,” the Respondent replied, “Sure.” The Respondent admitted that he informed her that he had a lot of pictures and when she inquired about what they were of, the Respondent replied, “My cock.” As LisaDowntownGal inquired as to whether the pictures were of him in shorts he replied “naked cock.” The Respondent also admitted that he informed her that he would wait for her topless webcam picture of herself. The Respondent again reiterated that he felt someone was screwing around with him, so he chose to continue the conversation of a sexual nature rather than shut the conversation down.

The Respondent acknowledged that in between the period, November 9, 2005 and February 23, 2006, when he contacted YngBunny90, he made no attempts to review the profile of YngBunny90 either. The Respondent admitted that he received a headshot picture of her and he asked for another picture. She then sent him the picture of her in a bikini from a rear shot on November 9, 2005, and he continued to chat with her on November 11, 2005. The Respondent acknowledged that he had a conversation in which he stated, “That’s okay. I want to see more.” The Respondent admitted that the bikini picture was not enough for him and he wanted to see more. He also admitted that he asked for naughty pictures.

The Respondent admitted that they had conversation where he asked YngBunny90 whether she liked “giving head.” He also wanted to know whether she

liked to "spit or swallow." The Respondent acknowledged that he told her he liked oral sex and admitted to saying, "Oh, you'd cum, you'd be in heaven." The Respondent admitted that the conversation continued with her asking if he ever comes to Queens or Manhattan and he asked her where she lived. When she responded, "Glendale," he asked if she was looking to meet and when she replied that he sounded nice and asked whether she could trust him, the Respondent replied, "Yup."

The Respondent acknowledged that the conversation continued and YngBunny90 informed him that she went to a sweet 16 party. The Respondent asked her if she got "laid" and she replied, "No." When she asked him the same question he responded, "No I jerked off LOL (laugh out loud)." He admitted to telling her that he loves to do that. The Respondent acknowledged that he told YngBunny90 that he was going to Disney World with his family, and he admitted that he did, in fact, go with his family." The Respondent also admitted that he told information about him and his family taking a vacation to someone whose identity he was still trying to authenticate.

The Respondent's conversation continued with YngBunny90 by him asking her if she wanted him to come and "lick her." She asks if he can pick her up after school and the Respondent says, "Maybe". He tells her that she could be a cop and YngBunny90 says, "I'm not a cop." The Respondent acknowledged that both LisaDowntownGal and YngBunny90 never said they were any other age other than 14 years old. He admitted that even if someone was "screwing around with him," that he still could get into trouble by engaging in this type of chat. He understood that he could be convicted of a crime as he was and possibly even go to jail.

With regard to the 27-year old person who identified herself as HottieKimNYC, the Respondent stated that she never sent him pictures. He accessed her profile; hit the

pictures section in her profile and her pictures came up. He said that he was able to authenticate who she was by looking at her pictures in her profile. He acknowledged that he first conversed with her on March 6, 2006. He said that she stated that she was 27 so he believed her. The Respondent admitted that since she was 27, he arranged for her to meet him the next day at Floyd Bennett Field in Brooklyn. He also admitted that he told her not to wear any perfume.

With respect to the nude photographs of Wein, The Respondent acknowledged that during his 2003 interview, he told the investigator that he did not have nude photographs of her. He admitted that he learned at a later date that there were nude photographs of Wein on his home computer. He said that the photos were shown to his wife by friends. He could not recall exactly who the friend was that showed his wife the photos. The Respondent acknowledged that although he told his wife to delete the Wein photos, she never did and he never did. He admitted that at some point later, his computer had problems, so he downloaded all of his computer files to discs which included the Wein photos. When he received his computer back, he reinstalled all of the files on disc back onto the computer, including the Wein file. He also admitted that at some point the Wein photos were downloaded to cell phone software, but he denied that he ever downloaded those photos to a cell phone. He stated that in the four years since the initial Department investigation into the Wein nude photos, he never learned how the pictures ended up on his home computer.

During redirect examination, the Respondent testified that when he made reference to cell phone software, he was referring to software from Nextel which he did not have access to. The Respondent denied that he had any type of software either on his laptop or home computer which would have allowed him to download the Wein photos to

his Nextel phone. He said the software he was making reference to was the software that converted the image to wallpaper. He acknowledged that at one point during his Official Department Interview, he told DeFazio that the screen name YngBunny90 and her pictures seemed as if somebody was "screwing around" and that it was a joke.

As to the plea in Criminal Court to the B misdemeanor, the Respondent acknowledged that on the date in question, the only contact he had was initiating a chat with the word, "Hiya." The Respondent testified that he had to answer the judge's questions and his only options were to either take the plea or go to trial on the E Felony. The Respondent admitted that the best thing he could have done in this matter was to have blocked the screen names in the beginning.

During questioning by the Court, the Respondent testified that the large number of nude photographs contained in the forensic report (DX 19) came from chats on AOL that either he had, his wife had or anyone else who used his computer could have had. The Respondent acknowledged that during his direct examination, he stated that he converted some of the nude photographs of Wein to a file that could be downloaded to a cell phone. When asked to explain what type of file this was, the Respondent said that the file was a Nextel phone file. He stated that at the time the file was created, he did own a Nextel phone. The Respondent denied that he ever took that file that was Nextel ready and downloaded it to his cell phone. He stated that he did not know if his wife did that. He said that the file also contained other photographs and were not stored on a CD-ROM but on the computer itself. The Respondent denied that he ever opened his cell phone or anyone else's cell phone in the deli and showed people nude photographs of Wein as the witnesses testified to. The Respondent said that the witnesses came into court and lied about him under oath.

The Respondent said he had the falling out with Wein because after her mother died, she began to hang around with undesirable people and she brought one such male to his home. He stated that he did not want his daughter around this type of company at his house. He denied that the falling out had anything to do with the nude photographs found on the computer. The Respondent denied that Wein ever confronted him about giving her the nude photographs he had of her.

With respect to the Bushmaster rifle, the Respondent stated that the rifle was never listed on his Force Record with the Department. With regard to the Forensic Report (DX 19), the Respondent was asked to look at p. 35. He agreed that the photograph was of a nude female with underdeveloped breasts. He stated that he estimated her age to be 18 or 19. He said that he had no way of knowing who downloaded that picture. He admitted that his wife also downloaded nude photographs of females. He also looked at p. 115. He agreed that the picture depicted what appeared to be cheerleaders in a cheerleading position with no tops on and their breasts were also undeveloped. He estimated their ages to be 17 or better. He also stated that they could be 14 years old also. The Respondent testified that when he saw the forensic report, he knew that these were photographs that had been stored on his home computer.

The Respondent testified that he asked his wife if she ever downloaded the nude photographs of Wein to the cell phone and she denied it.

EXHIBITS IN EVIDENCE

The following are exhibits which were received in evidence during this proceeding and are summarized as follows:

Court Exhibit (CX) 1 is a five-page document of the criminal court proceeding, The People of the State of New York against David Velez (the Respondent). At the proceeding, the Respondent pleaded Guilty in open court to attempted endangering the welfare of a child, a Class B misdemeanor before the Honorable Gerald Harris, presiding judge, New York County Criminal Court. The Respondent admitted that on August 19, 2005 in New York County, through the use of a computer he attempted to endanger the welfare of a child by sending a text message of a sexual nature to a person he believed to be 14 years of age. The Respondent received a sentence of a Conditional Discharge, the condition being to serve ten days of community service. He also had to pay a surcharge and court fees.

Department's Exhibit (DX) 1A is a DeadAIM Log of the first chat sent to the Respondent by the screen name LisaDowntownGal. DX 1B is LisaDowntownGal's America On Line (AOL) profile which described her as a 14-year old from the Soho Tribeca area. It also stated that she enjoys her shoes, iPod, "the Boyz in Blue (NYPD)" and the "Rubbermen (FDNY)."

DX 1C is the Respondent's AOL profile with his wife [REDACTED]. Their marital status was listed as "having fun together or solo" and it also mentioned that he was a detective and she was a paralegal. DX 1D-II are the photo attachments to the Respondent's AOL profile. They contain photos of the Respondent and his wife having dinner, posing on a boat, swimming, and one photograph is of the Respondent with no shirt displaying his bare chest and tattooed upper body. DX 2A-2B are enlarged photographs of the Respondent wearing a gold shield and another photo of the gold shield enlarged, respectively. DX 3A-3D is the text of chats between LisaDowntownGal and the Respondent whose screen name is KingsCpl4U. They begin with them identifying

themselves and then the chats become sexual in nature. **DX 4A-4N** is the communications between YngBunny90 and the Respondent. This includes: chats, photos of YngBunny90 sent to the Respondent which include a head shot, a rear shot of her walking on the beach in a bikini, and a full body shot of her leaning on a car. It also includes YngBunny90's AOL profile. She described herself as being 14 years old from NYC. She stated that her occupation was to become a future Playboy bunny. The chats shortly after commencing become sexual in nature.

DX 5A is a *subpoena duces tecum* prepared by Detective Thomas Janow and sent to AOL requesting all login data for the screen name KingsCpl4U. The subpoena is dated August 24, 2005. **DX 5B** is the response from AOL, **DX 5C** is an AOL profile prepared by the Respondent for the screen name TRANS 5363. **DX 6** is a request from Janow to AOL asking that they preserve all e-mails and IP Connection data with respect to the AOL account held by the Respondent's wife [REDACTED] which includes KingsCpl4U and other screen names. **DX 7** is the sign on/off log between KingsCpl4U and LilBoiBlue91.

DX 8 is a copy of a letter dated January 18, 2006 sent to AOL by Janow requesting all IP connection data for KingsCpl4U. **DX 9A** is a subpoena dated January 18, 2006 for the IP connection for KingsCpl4U and Trans 5363. **DX 9B** is a faxed cover letter from AOL to Janow dated February 2, 2005. **DX 9C** is account information from AOL. **DX 9D-9F** is the AOL IP Log Re: TRANS 5363. **DX 9G** is a fax cover from Janow to AOL Legal Department. **DX 9H -9I** is a copy of a cover letter to AOL Re: subpoena, and a copy of the subpoena, respectively.

DX 10A-10B are the text of chats between HottieKimNYC and the Respondent [KingsCpl4U] **DX 10C** is the AOL profile of HottieKimNYC who identified herself as a

female who works in a hospital whose hobbies include "ADULT FUN " and "Boys In BLUE (& sometimes girls)." **DX 10D-10E** are photos of HottieKimNYC emailed to the Respondent, KingsCpl4U. **DX 10F** is an instant message form HottieKimNYC to KingsCpl4U. **DX 11a-11t** are photographs of the Respondent's vehicle entering Floyd Bennett field to meet HottieKimNYC. **DX 12A** is a copy of Janow's computer screen showing four people online. **DX 12 B** is a copy of Janow's computer screen showing his instant buddy list. **DX 13** is the affidavit in support of the search warrant and the search warrant of the Respondent's home and his two vehicles. **DX 14** is the affidavit in support of the search warrant and the search warrant of the Respondent's disks and Dell computer. **DX 15A-15C** are copies of the Property Clerk Invoices for M761040, M761043 and M761044, respectively. **DX 16** is a copy of the Removal/Restoration of Firearms Report.

DX 17A-17F are photographs of the opening of the Respondent's locker in his command, and the contents being removed which include, a lap top computer and its case. **DX 18A-18L** are 12 pages of nude pictures of Vanessa Wein taken from the Respondent's computer. **DX 19** is a copy of the Computer Forensic Examination Final Report Re: Respondent, prepared by the Computer Crimes Investigations Unit, Group 7 of the Internal Affairs Bureau (IAB). The report is a 134-page document based on the forensic study of the Respondent's lap top computer and home PC computer. The three objectives of the report were to ascertain: 1) Any emails from or to YngBunny90@aol.com, LisaDowntownGal@aol.com and HottieKimNYC@aol.com; 2) Any chats with YngBunny90, LisaDowntownGal, and HottieKimNYC; and 3) Possible existence of additional victims. The report contains e-mails, search hits to folders, and from pages 33-133, approximately one hundred images of nude pictures of females, either topless,

bottomless or both which has been labeled as "Warning possible child pornography."

On page 86 of the report, there is a picture of the Respondent who appears to have his penis exposed

DX 20 is an IAB worksheet requesting a subpoena to AOL dated August 16, 2005.

DX 21 and 21a is the transcript and tape of the Respondent's Official Department Interview:

Transcript of the Official Department Interview of Detective David Velez (Respondent)

The Respondent was interviewed on April 25, 2007 at 2:36 p.m. by Lieutenant Mark DeFazio. Also present at the interview were Sergeants Ralph Dimiglio and Mike Cafero of IAB Group 31. The Respondent was represented by his attorney Mitchell Garber. DeFazio informed the Respondent that he was being interviewed based on three Charges and Specifications that were served on him. Charge One was that on August 19, 2005 the Respondent used his computer to transfer information of a sexual nature to a person who was a minor for his sexual benefit. Charge Two was that on August 19, 2005 the Respondent engaged in an act in a manner likely to be injurious to the physical, mental and moral welfare of a child less than 17 years old. Charge Three involved the Respondent being in possession of an unauthorized, duplicate Police Department shield.

The Respondent was advised that he was being interviewed as a subject in the Official Department Interview. He was read the provisions of Patrol Guide 206-13 which involved answering questions during an official investigation as well as the provision involving the making of false statements. The Respondent stated that he was satisfied with his legal representation. The Respondent stated that he was 36 years of age, that he

was married and had an 11-year old daughter. He said that between April 19, 2005 and March 14, 2006 he had two computers, a stand alone computer and a laptop computer.

He was shown a photograph which he identified as his locker in the 67 Precinct Detective Squad. The Respondent stated that he shared his locker with two other detectives in the squad. He explained that Detective Jupiter had her own laptop, but Detective Colon would use his. He further explained that Colon would access information related to his business on his laptop, but he did not think he had access to his (the Respondent's) files. The Respondent acknowledged that he would use the laptop at work to type files and in his downtime, go online and chat. With regard to his home computer, the Respondent stated that his wife, mother-in-law and daughter also had access to the computer. The Respondent said that his home computer initially did not have parental controls because the games his daughter played would not allow parental controls. He also said that the files on his home computer were not password protected and that his daughter could gain access to them if she knew how to access the files.

The Respondent stated that he was currently on Modified Assignment at the Fleet Services Division. He recalled that he was arrested and suspended on March 14, 2006. The Respondent explained that he was arrested by IAB investigators and they informed him that he was accused of chatting online on the computer with a minor in an inappropriate manner. The Respondent acknowledged that he was initially charged with a Class E felony and a misdemeanor in connection with this arrest. It was stipulated that the Assistant District Attorney dismissed the felony count, that the Respondent had not been indicted, and that the remaining count was a Class B misdemeanor endangerment count. The Respondent admitted that he asked the investigators how long he had been under investigation.

The Respondent acknowledged that at the time of his arrest, he was in possession of an unauthorized duplicate Police Department shield. He said that he received it from a Detective Fung, but that his original shield was inside of his locker and that it had been recovered. The Respondent was advised that pursuant to the search warrant issued on his home, a Bushmaster assault rifle was recovered at his residence. He admitted that the weapon was his and that it had a flash suppressor and a collapsible stock. DeFazio informed him that pursuant to the Administrative Code, it was illegal to possess such a weapon in the five boroughs. The Respondent stated that he was unaware that the weapon was illegal. He said that he was advised by the person in the licensed gun shop that it was a legal law enforcement weapon. DeFazio advised the Respondent that the person in the gun shop was mistaken. He also advised the Respondent that he would be receiving an additional charge for this misconduct.

The Respondent stated that on or about August 19, 2005, his internet provider was America On Line (AOL). He was questioned as to who was assigned to the account and the Respondent explained that it was assigned to his wife, [REDACTED] but that he made the payments on the account. The Respondent admitted that he used the screen name KingsCpl4U. The Respondent was read the member profile set up for the account and he acknowledged that it described him and his wife (DX 1C). He was also shown the pictures attached to the profile and the Respondent acknowledged that all of the pictures were of him and his wife or both of them (DX 1D-1I).

When questioned by DeFazio, the Respondent stated that he "surfed the internet" which was going online, playing around and going to different websites. He said that he went to chat rooms such as "I Love NY Cops." He explained that police officers from the city and state would chat with women over 40 and other guys. The Respondent said

that there were other screen names attached to the account, but Trans 5363 was the main account where he transacted business such as banking and KingsCpl4U was his "screw around screen name." The Respondent said that he used Instant Messaging (IM). He explained that IM was when he observed someone online, he would type a message to the person and if they responded, they could begin to chat.

The Respondent acknowledged that on August 19, 2005 and September 1, 2005 he was chatting with a person named LisaDowntownGal. He acknowledged that during the conversations, she said that she was 14 and the Respondent said she was too young and that he could get into trouble. DeFazio asked him if he was aware on that date that if he engaged in sexual conversation with the girl he could get into trouble and the Respondent replied, "Yes." The Respondent acknowledged that he signed off shortly thereafter and the next time he chatted with her was on September 29, 2005. The Respondent was read the text of the conversation between him and LisaDowntownGal on that date. He acknowledged that he told her "I love eating pussy," and he asked her for pictures. He also admitted that on November 2, 2005 he again asked for pictures and informed her that he had pictures of his "naked cock."

The Respondent was also questioned about his communications with the screen name YngBunny90. The Respondent was read the communications between himself and YngBunny90. He admitted that he identified himself as an NYPD detective during the chat. He also admitted that he asked her for pictures, she sent them, and he downloaded them. The Respondent stated that when he communicated with her and saw her pictures, he assumed she was someone who was 17 years old or more. He explained that when he saw the pictures, he thought someone was joking around with him. He acknowledged that he then started asking about oral sex. The Respondent explained that he went along

with the conversation. The Respondent acknowledged that he asked YngBunny90 when she was going to turn 15 after he already asked her about "oral sex" "giving head" and whether she likes to "spit or swallow" after performing oral sex.

The Respondent acknowledged that he had more explicit chats with YngBunny90. He acknowledged talking to her about "jerking off," and he admitted asking her if she wanted him to come and "lick" her when he was home on December 1, 2005 because he was going on vacation to Disney December 2 - December 9, 2005. The Respondent told DeFazio that he, in fact went to Disney on those dates.

The Respondent acknowledged that he contacted a screen name HottieKimNYC. He admitted that he set up a meeting with her on March 7, 2006. He selected Floyd Bennett field in Brooklyn and explained that he picked that location because it was close to his home. He acknowledged that the photographs taken by IAB were of him in his red truck driving in and roaming the field (DX 11a-11t). He explained that he left when he did not see the car that HottieKimNYC was supposed to be in.

The Respondent testified that he knew a female by the name of Vanessa Wein. He said that she used to baby sit his daughter. The Respondent was given a chance to review his Official Department Interview in a 1993 case. He said that he had no questions regarding it. He told DeFazio that he knew there were pictures of Wein on a disc. He explained that his wife had the disk and told him about it. He said that the pictures were on the computer, and he copied files from his computer onto a disk as a backup. He described the photos as nude photos of Wein that he maintained on his home computer. He explained that some people showed the photos to his wife.

The Respondent stated that to his knowledge, he did not have software on his computer which would cause any pictures viewed on his computer to be saved to a file

without someone knowing about it. The Respondent admitted that he did view the nude photographs of Wein. When asked what did he do with the photographs once he viewed them he stated that he told his wife to get rid of them, but she did not and he could not do anything about that. He stated that he did not view the photos again. He also said that he did not delete the pictures. He told DeFazio that he did know how to delete photographs. DeFazio asked the Respondent the following question with regard to Wein's nude photographs:

LT DEFAZIO: You did not download them [the pictures] into your cell phone?

DET VELEZ: No I don't think so.

The Respondent explained that the photographs could have been in the cell phone software. He denied showing the photos in the neighborhood and denied ever having nude pictures of Wein in his cell phone. After a break, the Respondent explained that he had a program which converted pictures on his computer into a cell phone screen saver. He further explained to DeFazio that the software only converted specific photos. The Respondent stated that he converted the photos of Wein onto a program that could load the pictures onto his cell phone. DeFazio asked the Respondent how he could convert Wein's photos into a program for the cell phone if he never looked at the nude photographs after the first time. He stated that he was simply clarifying a question that was asked earlier.

DeFazio asked the Respondent whether he took the naked photographs of Wein and converted them into a program that could be downloaded onto his cell phone and he stated, "Yes." When asked why he would do that, the Respondent said, "Just to do it." DeFazio asked him why he would do that after the very serious allegation he had lodged

against him in the other case and he stated that since the other Official Department Interview was over, he saw no malice after it was done. DeFazio asked him again whether the Wein photographs were transferred into his personal cell phone and the Respondent denied it. He was asked whether the Wein photographs were transferred to his wife's cell phone and the Respondent replied, "That I can't answer for."

With respect to LisaDowntownGal and YngBunny90, the Respondent acknowledged that he had sexual chats with the two females who identified themselves as being 14 years old and who the Respondent also believed were 14. The Respondent stated in conclusion, "I'm not guilty. I'm not a pedophile that I can tell you. Maybe stupid yes. Pornographer yes. Pedophile no. Definitely not." The interview was concluded at 4:08 p.m.

FINDINGS AND ANALYSIS

Specification Nos. 1 and 2

The Respondent stands charged herein with engaging in communication of sexual conduct which is harmful to minors and which such communication is transferred from one computer to another, engages in such communication with a minor and attempts to importune, invite or induce a minor to engage in sexual intercourse, oral sexual conduct, anal sexual conduct or sexual conduct or sexual conduct for his benefit, to wit: the Respondent did initiate and engage in sexually explicit electronic communications with an individual known to the Department whom the Respondent, a detective believed was a 14-year old girl. I find the Respondent guilty as charged. Specification Nos. 1 and 2 have the same wording, except that Specification No. 1 refers to LisaDowntownGal and Specification No. 2 refers to YngBunny90.

It was established through Janow, the investigator in the case, that the Respondent frequently visited the "I Love New York City Cops" chat room in an effort to chat with people. The Respondent admitted that he visited the chat room and sent an Instant Message to all of the screen names he believed to be female in the chat room. He later received a response from LisaDowntownGal who, at all times identified herself as a 14-year old girl. After review of the chat logs in evidence, (DX 3A-3D), and the testimony of Janow, it was established that the Respondent initiated the chats that took on sexual overtones. On September 29, 2005, for example, the Respondent asked LisaDowntownGal if she was sexually active. He inquired as to what she had done sexually. He informed LisaDowntownGal that he was very "oral," that he liked to "eat pussy," that he would like to see pictures of her, and he also asked her had she "ever had [her] your pussy eaten."

During the next chat session held on November 2, 2005, the Respondent continued to ask for pictures, "naughty pictures," and when LisaDowntownGal inquired as to whether topless pictures count, the Respondent responded by answering in the affirmative and asking her what else did she have. He informed her that he had a lot of pictures of his "naked cock." To state that this type of online chatting does not invite sexual conduct, particularly for the Respondent's benefit, would be an understatement. If LisaDowntownGal did not have "naughty pictures," she would be encouraged to get some based on the Respondent's professed interest. He made inquiries as to what she had done sexually and informed her of what he liked sexually. To engage in this type of discourse with someone who identified herself to the Respondent as being a minor is reprehensible. The Respondent contended that he felt someone was "screwing with him," but that still did not justify initiating and continuing this type of sexual, verbal discussion

with someone who stated during the chats that she was 14 years of age. Moreover, the fact that LisaDowntownGal was really Janow, an undercover detective posing as an underage girl in a chat room does not diminish the culpability of the Respondent and the fact that he initiated the sexual chats.

It was established in Court through Janow's testimony that much like LisaDowntownGal, the Respondent initiated communication with YngBunny90 while she was in the same "I Love New York City Cops" chat room. In fact, it was only nine days after his chats with LisaDowntownGal that he then contacted YngBunny90. There were five instant messages between the Respondent and YngBunny90. Much like LisaDowntownGal, not only did YngBunny90 have a profile set up on AOL which identified her as a 14-year old girl, but she also identified herself as such during the chats with the Respondent.

According to Janow's testimony, the Respondent contacted YngBunny90 on November 11, 2005 and asked her if she had any "naughty pics". She responded that she did not have any, but a friend did have one of her on the beach. The Respondent proceeded to ask YngBunny90 if she was "oral" and if she liked "giving head." After she replied in the affirmative, the Respondent asked her if she liked to "spit or swallow." He then asked her, "You like to get eaten?" and when she asked what he was talking about the Respondent retorted, "Getting your pussy eaten." The Respondent then informed her that he loves to do that and when she asked why was it so good, he replied, "OH You'd cum You'd be in heaven." The Respondent was clearly not in doubt as to the age of the person he was chatting with because he asked her at one point when was she going to turn 15. The Respondent pursued his sexual discourse when YngBunny90 informed him she would be home alone in December. Although the Respondent advised her he was

going to Disney on December 2, he said he would be around December 1 and, "WANT ME TO LICK YOU?"

The online chats between the Respondent and YngBunny90 continued. He asked her if she got "laid" at the party she mentioned attending. He told her that he loves to "jerk off" and that he would do it for her. At some point the Respondent may have felt uneasy about his discussions with YngBunny90 because he asked her if she was a police officer, and even though she denied being one, he later blocked her from sending Instant Messages (IMs) or other e-mails to him for a period of time. Again, the Respondent argued that he thought someone was behind this, yet it did not curb the nature of the conversations that he initiated with YngBunny90. The Respondent not only engaged in sexually explicit conversations with her, but also promoted his own sexual prowess when he offered to "jerk off" for her. Moreover, the Respondent did not keep the underage girls that he chatted with permanently blocked. He testified that he unblocks everyone on a monthly basis in an effort to clean up his buddy list.¹⁶

The Respondent also argued that even though LisaDowntownGal and YngBunny90 had AOL profiles, he did not review their profiles before commencing to communicate with them. I find this argument to be without merit. For one, the Respondent set up an elaborate profile of him and his wife (DX 1C-D). It contained many colored pictures of him and his wife, in the ocean with a coral reef, having a meal at a restaurant, in casual clothes, and one photograph of the Respondent standing bare-chested and displaying the tattoos on his body. The written profile described them by name, [REDACTED] and David, that he was a detective and she was a paralegal, that they were from [REDACTED] and that their personal quote is: "Don't Knock it until you try it, Live Life to

¹⁶ Buddy list is an AOL internet feature which allows one to keep track of screen names that are frequently chatted with in Instant Messages.

the Fullest!!!!!!.” It is clear the Respondent spent time and effort in creating this profile for others to view. Likewise it would be anticipated that when the Respondent communicated with people on line, he would review their profiles also.

Secondly, the fact that the Respondent does review profiles was evidenced by his communication with HottieKimNYC. Although her profile was for an adult female and who within one day of chatting the Respondent set up a physical meeting with her, he acknowledged during cross-examination that he would not engage in frequent chats with someone without first reviewing their profile to authenticate who they were. It is hard for this court to believe that during the three-month period, August 19, 2005 – November 17, 2005 that the Respondent was chatting with LisaDowntownGal, he never once looked at her AOL profile. It is for these reasons that the Court believes the Respondent did review the profiles of both LisaDowntownGal and YngBunny90 during the time that he chatted with them. More importantly, the Respondent continued his explicit, sexual chats with LisaDowntownGal and YngBunny90 after they both identified themselves as being under age.

This type of explicit sexual conduct on the internet by a detective of the New York City Police Department with two individuals who identified themselves as being minors [LisaDowntownGal and YngBunny90] is conduct prejudicial to the good order, efficiency and discipline of the Department. The Respondent not only entered the “I Love New York City Cops” chat room, but also he identified himself as a detective from Brooklyn to both LisaDowntownGal and YngBunny90 in subsequent chats and this conduct would surely bring discredit to the Police Department.

Accordingly, I find the Respondent Guilty of Specification Nos. 1 and 2.

Specification No. 3

The Respondent stands charged herein in that on or about and between August 19, 2005 and February 23, 2006, he did wrongfully engage in conduct prejudicial to the good order efficiency and discipline of the Department in that he entered into an internet chat room and identified himself as a New York City Police Department detective in order to have contact of a sexual nature with a child less than 17 years old. I find the Respondent Guilty as charged. As was previously stated, the Respondent initiated chats with LisaDowntownGal and YngBunny90. His profile identified himself as a detective from Brooklyn and he went to the "I Love New York City Cops" chat room to engage in discourse with LisaDowntownGal and YngBunny90 whom he knew had identified themselves as being 14 years old. The Respondent had more than one conversation with LisaDowntownGal and YngBunny90. He asked both of them how old they were and they both said in sum and substance 14 years old. Yet the Respondent continued to have conversation with both of them and, in fact, initiated the sexual aspects of the conversation with both of them.

As evidenced in the November 16, 2005 chat between the Respondent [identified as KingsCpl4U] and YngBunny90 (DX 4i) :

YngBunny90: i went to this lam sweet 16 party

KingsCpl4U: GET LAID

YngBunny90: NO did you?

KingsCpl4U: NO I JERKED OFF LOL

YngBunny90: really what's that like

KingsCpl4U: YEA I LOVE DOING IT

YngBunny90: never saw a guy do it

KingsCpl4U: ID DO IT FOR YOU

It is evident from the conversations that the Respondent was having with both LisaDowntownGal and YngBunny90 that he was receiving sexual gratification from these discussions. He continued to have them and in fact propositioned YngBunny90 from the chat quoted above to observe him masturbate. It must be considered that in addition to the chats the Respondent had with the two identified minors, he also identified himself as the "World's Greatest Detective" in his AOL Profile that anyone could access. He initiated the discussion and told LisaDowntownGal during his chat on September 1, 2005 that he was a "detective" and when she asked, "[R]eally like an undercover," he replied, "No like squad NYPD blue." (DX 3). He began his chat with YngBunny90 on November 9, 2005 by stating, "Hiya dave here from [REDACTED] im a nypd detective." The discussion lasted less than five minutes but in that time, the Respondent identified himself as a member of the New York City Police Department; he asked YngBunny90 if she had pictures and when she said yes, he asked her for them and when she replied that she sent them, the Respondent abruptly logged off of the computer and ended the chat.

The Respondent's action of identifying himself as a detective and his quick logging off after he received the pictures from YngBunny90 was the action he took to get to the means that he wanted, "naughty pictures" of young girls. The fact that he identified himself as a detective may have been a means to make the children feel safe chatting with him, when, in fact, the sexual conversations that he always initiated would instead be considered actions to endanger the welfare of children. This is also evident by the Respondent's guilty plea in Criminal Court in New York County. On May 9, 2007, before the Honorable Judge Gerald Harris, the Respondent pleaded guilty to attempted

endangering the welfare of a child, a class B misdemeanor. He admitted in open court the following:

THE COURT: By entering this plea, do you admit that on August 19, 2005 in the county of New York, through the use of a computer you attempted to endanger the welfare of a child by sending a text message of a sexual nature to a person you believed to be 14 years of age?

THE DEFENDANT: Yes, sir.

By pleading guilty, the Respondent admitted that his sexual chats with LisaDowntownGal amounted to a crime. Based on the above, I find the Respondent Guilty of Specification No. 3.

Specification No. 4

The Respondent is charged with wrongfully possessing an unauthorized, duplicate New York City Police Department shield. Evidence adduced at trial established that upon the Respondent's arrest, his Department shield was recovered and when an attempt was made to turn it in at the Department, it was determined to be a duplicate shield. The Respondent admitted that he was in possession of this unauthorized shield without permission or authority of the Police Department at the time of his arrest.

Accordingly, I find the Respondent Guilty of Specification No. 4.

Specification No. 5

The Respondent is charged with making false and misleading statements to Lieutenant Mark DeFazio during his Official Department Interview by stating that he did not possess downloaded nude photographs of Wein on a personal cellular phone used by him knowing that the statement was not true. I find the Respondent Guilty as charged.

During the Respondent's Official Department Interview held on April 25, 2007, he was asked several times by DeFazio whether he downloaded the photographs of Wein onto his cell phone. (DX 21A). At one point the Respondent explained how he had repairs done on his computer and he backed up the data on his computer onto a disk. He further explained that once the computer was repaired he reloaded the data from the disk back onto the computer. He stated that that was the last time he saw the Wein photographs.

The Respondent was specifically asked:

DeFazio: And is that the last time you seen those photos?

Respondent: Yes. That was the last time I saw those photos there.

DeFazio: You did not download them into your cell phone?

Respondent: No I don't think so.

DeFazio asks the Respondent again:

DeFazio: ...Now I am asking you, did you take those photos out of your computer and stick them on your cell phone and show them around the neighborhood?

Respondent: Not the cell phone.

DeFazio: You didn't put them on your cell phone?

Respondent: They may be on the cell phone software, but I didn't put them on the cell phone.

The conversation continues and DeFazio again asks:

DeFazio: ...You did not take Vanessa Wein's photographic, naked photos. Detective Velez, did you take those photos and transfer them to your cell phone in 2003 or 2004?

Respondent: No.

After a break, the Respondent explained that he did take photos from his computer and put them into a program that puts them on the cell phone as a screensaver. DeFazio responded with the following question:

DeFazio: Is it your testimony today, or your statement that you took Vanessa Wein's naked photos, at least one of them, and put it in that format so it could be downloaded to your cell phone?

Respondent: Yes.

DeFazio: You did? Why?

Respondent: Just to do it.

DeFazio went on to question the Respondent as to why he would do this with the pictures after having had serious charges lodged against him in the past for having nude pictures of Wein and being subjected at that time to an Official Department Interview. The Respondent's response was:

Respondent: Because when the PG was done and over I figured there's no malice, no nothing, after it was done. When I saw the photos it was done.

The Respondent did not seem to recognize or even care about the seriousness of maintaining nude photographs of Wein even after an official Police Department investigation. He simply thought it was okay to keep her nude photographs on his hard drive.

Evidence adduced at trial also established that not only was the Respondent in possession of the nude Wein photographs, but also that he displayed the photographs to people in his neighborhood from his cell phone. P. Bartha testified that she was in the neighborhood deli ordering her lunch when the Respondent asked her if she wanted to see something. The Respondent proceeded to show her nude photographs of Wein on a cell phone. She asked the Respondent where he got the pictures and he said from his computer. She also asked him whether the cell phone belonged to him and he told her that it did. P. Bartha said as she was leaving the deli, Wein entered and the Respondent made a comment, "There is the tramp now."

J. Bartha testified that a few days before the Respondent was arrested, she was working the cash register at the deli when the Respondent pulled out his cell phone from his pocket and showed her the nude photographs of Wein. He asked her if she wanted to see pictures of a "dirty slut." Her mother, P. Bartha, walked into the deli and he showed the photographs to her also. She further stated that the Respondent proceeded to show the photographs to other patrons in the store, but she could not recall who they were. She stated that she did not believe her mother was able to get to the deli section before the Respondent showed her mother the images on the cell phone.

Although there were some inconsistencies in the testimony of J. and P. Bartha, the inconsistencies were minor in nature. For example, J. and P. Bartha may not have paid close attention at the time of viewing the nude photographs of their friend as to the color of the Respondent's cell phone. Also, J. Bartha was working the cash register at the time of the incident and may not have noticed whether or not her mother had ordered her lunch before the Respondent showed her mother the nude images on the cell phone. In addition, the fact that J. and P. Bartha attempted to testify as to the specific date the incident took place in the deli, but later testified it was days before the Respondent's arrest does not lessen their credibility. In fact, P. Bartha testified that she learned of the Respondent's arrest days after the deli incident in a newspaper article, yet still did not know the exact date of the Respondent's arrest. On the whole, however, the testimony of P. Bartha and J. Bartha are consistent and credible on the critical issue, that the Respondent showed them nude photographs of Wein on his cell phone.

The fact that the Respondent's Nextel cell phone and records were never obtained to verify whether the photographs were downloaded and may have been helpful in this matter, the records alone are not dispositive of the issue given the Respondent's own

statements, the testimony of the witnesses and the forensic evidence of the Respondent's own personal computer. When the Respondent's computer was seized and the computer analyzed, the nude images of Wein were not just found on the Respondent's hard drive, but were located in a folder that was ready to be downloaded to a Nextel cell phone. The Respondent testified that he owned a Nextel cell phone during this period of time. This is circumstantial, corroborative evidence that the Respondent maintained the nude photos of Wein on a personal cell phone.

All of these circumstances led the Court to believe that the Respondent did, in fact, make a false and misleading statement at his Official Department Interview held on April 25, 2007 when he stated that he was not in possession of nude photographs of Wein which were on his personal cell phone.

Accordingly, the Respondent is found Guilty of Specification No. 5.

Specification No. 6

The Respondent is charged with wrongfully possessing an unregistered Bushmaster XM-15-E2s assault rifle containing a flash suppressor, collapsible stock and a pistol grip. The Respondent admitted that he purchased this rifle and that at the time of his arrest, it was recovered from his premises. Although the Respondent argued that he purchased the rifle from a licensed gun dealer in Nassau County and that the dealer told him it was legal to own such a rifle as a police officer, I find this argument to be without merit. For one, the Respondent as a detective with the New York City Police Department should be aware of the ban on assault weapons in the city. Secondly, if the Respondent had to ask the dealer whether his possession of this firearm was permissible, he probably had doubts as to whether he should be in possession of it. Thirdly, upon questioning by

this Court, the Respondent admitted that he never listed the assault rifle on his Force Record maintained by the Police Department. This is an indicator that the Respondent knew possession of the assault rifle was illegal.

Accordingly, based on the Respondent's admission, I find him Guilty of Specification No. 6.¹⁷

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Police Department on January 13, 1993. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of initiating and engaging in sexually explicit communications over the internet with LisaDowntownGal and YngBunny90, individuals who he believed to be 14 years old. He has also been found Guilty of engaging in conduct prejudicial to the good, order, efficiency and discipline of the Department by entering into an internet chat room and identifying himself as a New York City Police Department detective in order to have contact of a sexual nature with a child less than 17 years old. Moreover, the Respondent has been found Guilty of wrongfully being in possession of an unauthorized, duplicate Department shield as well as an illegal

¹⁷ The Computer Forensic Examination Report (DX 19) offered and received into evidence in its entirety, without objection contained evidence relevant to the Charges and Specifications found in pages 1 to 31. It also contained many nude and/or sexually explicit photographs. With the exception of the photographs of Wein, also contained in Department Exhibits 18 A-L, no testimony was offered with regard to the persons in the photographs or how they were obtained. There is no evidence as to the age of the persons in the photographs nor is there any evidence offered to indicate that they were disseminated. Consequently, this Court did not consider these photographs and the heading page which preceded the photographs (pages 32-134) in its fact finding.

assault rifle. Furthermore, the Respondent was found Guilty of making false and misleading statements to DeFazio during his Official Department Interview by stating that he did not possess downloaded nude photographs of Wein on a personal cellular phone used by him knowing that the statement was not true.

The Respondent has been found Guilty of initiating sexual communications with two individuals identified as being 14 years old. He was arrested and pled guilty in Criminal Court to attempted endangering the welfare of a minor for engaging in such chats. The nature of these allegations, particularly the sexual communication charges and the false statement regarding the nude photographs speak to the moral turpitude of the Respondent. The fact that he would engage in these types of sexual discussions on the internet with individuals who identified themselves as being 14- year old girls speaks volumes on the character of the Respondent. At the conclusion of the Respondent's Official Department Interview held on April 25, 2007 when DeFazio asked him if there was anything that he wanted to say to assist in the investigation, the Respondent said the following, "I'm not guilty. I'm not a pedophile that I can tell you. Maybe stupid yes. Pornographer yes. Pedophile no. Definitely not."

The Respondent has been found Guilty of a number of violations. Possession of a duplicate Department shield may seem minor in comparison to the sexual communication charges, but the Respondent was also in possession of an illegal assault rifle. However, it is the Respondent's history with the Department, particularly as it relates to the sexual chats along with the Wein matter and his misleading statements as a police detective in an Official Department Interview which is most significant in considering the appropriate penalty for the offenses for which he has been found Guilty in this matter. At one point the Respondent testified that he used these explicit, sexual chats as part of his

“authentication process” to determine if someone was joking with him online. His skills as a Police Department detective did not come in to play and direct him to instantaneously shut down the chats with two females who identified themselves as being minors. Instead, he initiated the sexual aspects of the chats on the internet.

Even after a complete 1993 Department investigation into his alleged possession of nude photographs of Wein [based on the complaint of MacDougal], and his knowledge that the Department did not view this as acceptable conduct, it still did not prevent the Respondent from later keeping the nude photographs of Wein on his home computer. After discovering them, he did not delete them. He saved them onto a disk when his computer was giving him problems, and then he downloaded the nude photographs back onto his computer and saved them in a file that was ready to be downloaded to a Nextel cell phone. He then proceeded to show the nude photographs of Wein to the people in the neighborhood. This type of conduct by a New York City Police detective cannot be tolerated.

Being a police officer is serious business. But holding the discretionary position of police detective with the New York City Police Department carries even more responsibility. Considering the varied acts of misconduct that the Respondent has been found Guilty, and considering his lack of responsibility displayed in his own testimony, it is clear that the Respondent lacks the proper sense of law enforcement duty to continue as a police detective. It has been demonstrated by a preponderance of the evidence presented at this trial that the Respondent does not possess the moral character and judgment needed to continue as a uniformed member of the Police Department.

The public trust bestowed upon him has been broken and as such, he no longer needs to serve as a member of the New York City Police Department.

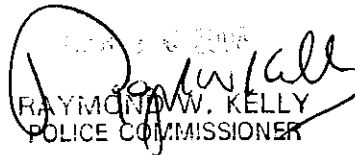
Consequently, I recommend that the Respondent be DISMISSED from his position as a detective with the New York City Police Department.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED



RAYMOND W. KELLY
POLICE COMMISSIONER